

Seattle University School of Law

## Seattle University School of Law Digital Commons

---

I. Core TJRC Related Documents

The Truth, Justice and Reconciliation  
Commission of Kenya

---

2-29-2012

### Public Hearing Transcripts - Thematic - Prisons and Detention Centres - RTJRC29.02 (NHIF Auditorium) (Prisons and Detention Centres)

Truth, Justice, and Reconciliation Commission

Follow this and additional works at: <https://digitalcommons.law.seattleu.edu/tjrc-core>

---

#### Recommended Citation

Truth, Justice, and Reconciliation Commission, "Public Hearing Transcripts - Thematic - Prisons and Detention Centres - RTJRC29.02 (NHIF Auditorium) (Prisons and Detention Centres)" (2012). *I. Core TJRC Related Documents*. 140.

<https://digitalcommons.law.seattleu.edu/tjrc-core/140>

This Report is brought to you for free and open access by the The Truth, Justice and Reconciliation Commission of Kenya at Seattle University School of Law Digital Commons. It has been accepted for inclusion in I. Core TJRC Related Documents by an authorized administrator of Seattle University School of Law Digital Commons. For more information, please contact [coteconor@seattleu.edu](mailto:coteconor@seattleu.edu).

**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION ON WEDNESDAY, 29<sup>th</sup>  
FEBRUARY, 2012, AT THE NHIF AUDITORIUM, NAIROBI**  
**(Thematic Hearing on Prisons and Detention Centres)**

**PRESENT**

<b>Ahmed Farah</b>	-	<b>The Presiding Chair, Kenya</b>
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Ronald Slye	-	Commissioner, USA
Gertrude Chawatama	-	Commissioner, Zambia
Patricia Nyaundi	-	The Commission Secretary

*(The Commission commenced at 10.00 a.m.)*

*(The Presiding Chair (Commissioner Farah) introduced himself and the other Commissioners)*

**The Presiding Chair** (Commissioner Farah): Good morning. On today's thematic hearings on prisons and detention centres our key concerns will be to understand the prison institutions, achievements so far, challenges faced, ills that have marred its image for instance, overriding lethargy, indiscipline, diseases, squalor, ineptitude and modern day slavery. These are among the many issues under prisons that fall under the TJRC's mandate. So, as we hear the truth today and also seek justice, let us be keen on recommendations that will foster national healing and reconciliation. To achieve this, we have invited Government officials and civil society organizations who work in the prison sector.

In addition, we had invited public figures such as the Right hon. Prime Minister hon. Raila Odinga, hon. Koigi wa Wamwere and many other dignitaries. We have received information from some of them that they were unable to come and for some we have not even heard from them. I would like to ask members of the public to please switch off your mobile phones; not to put them to vibration or silent as they will electronically affect our sound system and interfere with our HANSARD. Also please remain silent while the witnesses give their evidence by keenly listening to them.

With those few remarks, I now hand over the proceedings to the Leader of Evidence.

*(Dr. Ludeki Chweya took the oath)*

**The Commission Secretary** (Ms. Patricia Nyaundi): Thank you and welcome to the Commission. I will ask you for our record to please introduce yourself, your name and your current occupation.

**Dr. Ludeki Chweya:** My name is Ludeki Chweya. I am presently the Permanent Secretary in the Office of the Vice-President and Ministry of Home Affairs.

**The Commission Secretary (Ms. Patricia Nyaundi):** For how long have you served in that position?

**Dr. Ludeki Chweya:** I joined the office in April, 2008.

**The Commission Secretary (Ms. Patricia Nyaundi):** We have invited you to the Commission through our letter and we hope that you will enlighten the Commission on a number of issues regarding our prison institutions. So, now I do invite you to make your presentation highlighting the Government policy on prisons and also telling the Commission if you have the information with you, the number for instance of institutions that we have in this country and profiles, much in line with the letter that we have sent you. Thank you.

**Dr. Ludeki Chweya:** Thank you. Let me say that the issues you raised fall in two parts. The first has to do with policy and the other has to do with operational issues. I can handle the policy issues more satisfactorily because I am responsible for policy. But matters concerning operations, though I might know quite a bit the prisons officers will be able to respond to this more accurately.

Let me say first that when I joined the Ministry of Home Affairs there was a strike on the part of prison officers. Actually, the strike began the day I was taking over office. But it had nothing to do with me. I think the pressure had been building over time. So, the Vice-President who was also new in the Ministry appointed a high level committee to investigate the different problems that existed in the prison service on the part of officers as well as on the part of inmates and to make recommendations to the Ministry for improvement.

This committee was headed by the retired hon. Maj. Marsden Madoka. It worked very quickly and within two or three months they produced a report including their recommendations. They formally handed over the report to the Vice-President. I was pleased to hand over a copy to this Commission yesterday.

The Madoka Report showed that there were serious problems on the part of the terms and conditions of work for the officers and then there were also very serious problems concerning the welfare of inmates. Therefore, we set up an inter-ministerial committee to oversee the implementation of the recommendations contained in that report. I am happy to say that we have so far achieved substantial progress in implementing the recommendations and realizing tangible results.

It is now my pleasure to highlight some of the improvements that we have made so far. First of all, on the part of the officers, the Madoka Report showed that there was indiscipline. The level of discipline was low and in that regard the Government appointed a new Commissioner from outside the prison service and specifically from the police

service. Therefore, the new Commissioner has done very well in restoring discipline in the prison service.

The second problem pertaining to officers was lack of adequate supplies such as uniforms. Before then the supply was very limited. In fact, many officers had to buy their own uniforms. Therefore, the uniforms had different shades of colour. It was not a uniform at all. So, in that regard we procured uniforms for all of these officers. Today, nearly all of them are in their fourth or fifth pair. Further, the old uniforms were not of good quality. I remember the Vice-President saying we have to rebrand the prison service. In this regard we decided to change the uniform and introduced more beautiful and decent uniforms.

The other problem that pertains to officers was irregular and unpredictable system of promotions. So, we have since streamlined this by setting up interview board from the station to the provincial level and to the headquarters and emphasized merit.

So far, we have undertaken three rounds of promotions. All of them have been very successful and positive.

The other problem related to promotions was that there were very few positions. So, a lot of deserving officers could not get promotions. In liaison with the Ministry of State for Public Service as well as the Public Service Commission, we have been able to expand the establishment at all ranks. So, a lot of deserving officers now have clear upward mobility. I must mention now that about a week or two weeks ago, we received the necessary approvals from the Public Service Commission to create more positions at lower levels and to promote officers to those ranks. Now we have some 2,000 positions at the corporal level. This means that some 2,000 warders; the lowest cadre will be promoted to the next rank. Then some 1,800 or so will be promoted from corporal level to sergeant level. Another approximately 600 will be promoted from sergeant to senior sergeant. Then about 400 from senior sergeant to Chief Officer II and then another about 400 from Chief Officer II to Chief Officer I. Therefore, the interview process has now begun. These are changes that are bound to improve morale in the prison's service.

The other problem that the Madoka Report brought out was that prison officers had poor housing. We have about 18,000 officers. At that time, we had just about 5,000 housing units. This means we had a deficit of almost 13,000 housing units. Clearly it was not possible for us to provide this large number of houses. Therefore, again, realizing that the Treasury allocated us exactly Kshs500 million every year for the purpose of construction of houses. This amount is very modest compared to the number of houses we need to construct.

Nevertheless, we tried to improve efficiency in utilization of these funds by utilizing the prisons own facilities and skills to construct these houses. Specifically, we used the Government programme called Rapid Results Initiative (RRI), so that we were able to build more houses each financial year without forfeiting some of the money to the Treasury.

But this approach and based on this humble allocation of funds cannot clearly solve the problem as quickly. Therefore, we set up a committee based at the Treasury to develop a mechanism by which we can provide these houses much more rapidly using the public private partnership method. I am very optimistic that in the next two or three months, we will be able to implement that programme. Therefore, within about two to three years, we should be able to meet the deficit in staff housing.

So, let me now shift to the matter of inmates. The Madoka Report pointed out some very serious problems that characterized inmates. One of them was inadequate or poor living conditions ranging from beddings to food, healthcare and congestion in accommodation. So, regarding clothing, we decided that we must utilize our budget very carefully so that we could meet these needs.

Let me just elaborate a little bit and say that inmates slept on the cold floor. There were no mattresses or blankets. The food was really poor and inadequate. Therefore, today any inmate getting into our facility, we have admissions board that receives such an inmate. It assesses their needs and then we are able to attend to them accordingly. But more specifically, an inmate receives two pairs of uniform, a mattress, two blankets and a place to sleep. With regard to food, we had to go back to what the law specifies because their diet and ration is stipulated in the law. All we have done is to comply with the law so far as their diet is concerned.

Concerning healthcare, every prison has a health facility. The prisoners have access to the public hospitals in the districts, provinces and even the national referral hospital, Kenyatta National Hospital, for example. So, we receive a budget for their healthcare. For example, each year we spend about Kshs80 million to cater for healthcare services at Kenyatta National Hospital alone.

The other matter concerning prisoners is the state of human rights. As you know, the term “human rights” is quite broad. It touches on nearly everything that you could think about. Even the improvements that we have made with regard to clothing, bedding, food and so on, all of these are human rights issues. So, to the extent that we have made progress in this regard, we believe we have tried to lead the human rights standards in the prison service. Beyond that, we introduced a policy of openness so that anyone wishing to visit the prisons could do so freely. Since then we have had many groups visiting prisons. All one needs to do is to write to the Commissioner of Police to say I would like to visit prisons and then we will arrange for the individual or groups to visit.

So open has it been that these days not many people want to visit any more. When we started there was a commotion. But the doors are still open nevertheless for anyone to visit.

Secondly, the inmates were kept away from the community, family and friends. Visitation was very restricted in the past. But about a year and a half ago, as part of the reform programme, prisons authorities have introduced visiting days which are pretty

much like schools parents visiting day. So, an inmate who has relatives, friends, family and children can be visited. They will sit in the playfield for hours and interact. A parent can go through his child's school notebooks and they might bring the inmate some home food. So, I believe humanity has been restored in the manner in which we manage inmates.

I know that some relatives have been to my office to ask us to extend these opportunities and include facilities where they can enjoy their conjugal rights as well. But we have not been able to do this because it requires more elaborate facilities for which we are not ready as of now. I hope those who will come after us in future will be able to carry on. In a reform programme you begin with the basics and then others that are of a lighter nature can follow up in the near future.

With regard to the welfare of inmates, we went back in our thoughts to finding out what the essence of the prison is in society today. We know that previously punishment occurred in prisons because the law so provided for it. You will recall that our penal code included whipping and hard labour as part of the sentence that Judges and magistrates had meted out. But these were expunged from our laws which marked the beginning of the realization that a prisoner or an offender for that matter does not need to be punished but needs to be helped to reform. Therefore, the essence of prison in society today is to rehabilitate and reform offenders so that they can become better citizens and useful members of the community.

So, in this regard, we enhanced the offender rehabilitation programme. First of all, we set up a Directorate of Offender Rehabilitation Programme and appointed a director for that directorate. We then went to streamline the rehabilitation programme and this falls in four categories.

First of all, we offer counselling services because we believe that people engage in crime or otherwise offend others because of inadequacy of understanding about social life and how to deal with challenges that emerge as society becomes more and more complex.

Therefore, we strengthened our counselling services and then the second rehabilitation programme has to do with education because we realized that majority of inmates do not have adequate education. Arguably, this is what drives them into crime because they are not able to obtain legitimate means of livelihood because these days you need education to obtain a legitimate means of livelihood.

We developed education programmes at primary and high school levels. At primary level you could call it adult education, but it is education nevertheless because these inmate students sit national exams which all other candidates sit across the country. We have since been receiving very good results.

There is one exemplary case where an inmate scored A- in high school national examination. That inmate found his way out of prison through the existing legal

provisions and he is now undertaking a Bachelor of Veterinary Medicine degree at the University of Nairobi, and this is just an example.

Two weeks ago, I went to Naivasha Prison to launch Form One intake and generally to launch the high school education. And yesterday we committed Kshs10 million towards the purchase of school materials such as text books, notebooks, chalk and all manner of stationery that students require. We hope that in the very near future, we can also launch university education at the prisons; at least, through the existing distance learning programmes that have been introduced in most universities in the country.

The third rehabilitation programme has to do with the development of technical skills among prisoners. In this regard we offer them skills in carpentry, metal work, motor vehicle mechanics, repairs and tailoring, beauty parlors, saloons and so on, especially in women prisons. If you visited them, one of the entertainments that they will take you to is beauty contests and it always looks very good. Therefore, our intention is to ensure that inmates receive quality technical skills.

In this regard, we enroll them for the national trade test examinations and they pass in large numbers and they get their certificates. We pay about Kshs10 million for this per year. I can tell you that the prison industries that are attached to this programme have done very well and in the past few weeks or months you may have read that prison industries are now furnishing the rehabilitated National Assembly Chamber.

The prison industries are the ones who furnished the Milimani Law Courts; they are the ones who produce the car number plates and so on.

Finally, our rehabilitation programme entails chaplains. So, we have chaplains representing a variety of religions and denominations and they have been very successful in enhancing spirituality of inmates. A lot of inmates have since even become chaplains themselves. So, these are some of the reforms that we are introducing. With regard to human rights, we have introduced a human rights programme in the training curriculum at the prisons staff training college. This curriculum was approved by the Kenya Institute of Education (KIE) and then about two years ago, His Excellency the Vice-President launched the human rights programme in the Kenya Prisons Service. We appointed the human rights officer in every prison and they have been working well.

Lastly, there was a problem concerning congestion and we have attempted to solve it in three or four different ways. First of all, we have constructed new prisons and, when the prisons officials come here they will give you the exact number. Then we have expanded some of the existing prisons as well. This way we have eased or attempted to ease congestion.

The second approach has been to encourage the judges and magistrates to utilize the Community Service Orders Programmes (CSOP) in their sentencing and have less of custodial sentences. This way, offenders can be rehabilitated as they return home in the evening.

Then we have also been encouraging the Judiciary to expedite the cases that are in court in order to reduce the huge number of remandees. Usually we have about 52,000 prisoners per day and about half of these are in remand, which means some of them could be acquitted if their cases are determined. So, speed is of essence in this regard. Then we are happy that recently the Power of Mercy Committee (PMC) has been constituted and it should begin work soon. We hope that through that committee, some of the prisoners who have since reformed can be recommended for early release. I think that is all I can say for now.

But one last point is that, in our reform programme concerning inmates, we introduced a special needs offenders' programme. In November last year, the International Conference on Special Needs Offenders Programme (SNOP) was held here in Nairobi. The SNOP strives to provide specialized care and attention to prisoners who are in unique and special circumstances, for example, mothers who are imprisoned along with their infant babies and, therefore, they have to come to prison with their infants or they get babies when they are in prison; meaning they come to prison expecting babies. So, we have to cater for their special needs and then cater for the infants because such infants, according to the law, have to stay with their mother up to age four.

Then we have offenders with mental health challenges whom we have to cater for specially. Then we have offenders who are young and so we have to cater for them specially. Then we have the aged, the terminally ill and we have to put them on special diet. These are some of the improvements we have put in place in the prisons. I will be happy to respond to any question that may be there.

Thank you very much.

**The Commission Secretary (Ms. Patricia Nyaundi):** Thank very much, Mr. Chweya. I will ask you a few questions and then the Commissioners will also ask you more questions for clarification.

You have stated that the purpose of prisons is to rehabilitate and reform. I will just be seeking clarification that, in keeping with the reform programme in many Government institutions, has the vision and mission of prison institutions been put down in writing and, is it readily available for reference?

**Dr. Ludeki Chweya:** Yes. Thank you for that question. In our performance contracts, for this year, we are expected to develop correctional services policy and we have worked on that draft. In the next two or so months, we will be able to forward these documents to the Cabinet for approval and subsequently, we hope it can be developed into a Sessional Paper or a policy paper approved by Parliament.

**The Commission Secretary (Ms. Patricia Nyaundi):** Thank you. You also mentioned that some of the reforms that have been on-going target the officers within the institutions, including promotions. As you said, that was part of the problems of



stagnation of career progression. I just wanted to confirm that, as currently constituted, is the Prisons Department clearly defined that, to serve in such position you require particular qualifications or it is left to the discretion of the appointing officer?

**Dr. Ludeki Chweya:** You know we have the scheme of service and, therefore, promotions are conducted in accordance with the stipulations in the scheme of service.

**The Commission Secretary (Ms. Patricia Nyaundi):** Thank you very much. You also highlighted a number of initiatives that the Ministry in charge of prisons has undertaken. Could you please inform the Commission how well you have co-ordinated with the other sectors; for instance, the Judiciary and the police in some of these initiatives that you are undertaking?

**Dr. Ludeki Chweya:** We have worked very well and I believe we can do better. For example, on Monday, the day before yesterday, I travelled to Mombasa to speak at a conference of judges and magistrates. I think for them to have invited me to speak at their conference suggests the kind of co-operation that is emerging between the Judiciary and the Ministry of Home Affairs.

A year ago, I was also invited to speak at the colloquial conference of judges that was held in Mombasa. They were all there including the Chief Justice. I was able to explain to them the challenges that we face and how the Judiciary might help. Then also the chairperson of the Community Service Orders Programme (CSOP) who is actually a judge of the High Court has helped us a lot in terms of reviewing sentences and committing some to the CSOP and through other ways of reviewing sentences. So, I think we have made progress, but I must say there is more that we can do to improve the co-operation.

**The Commission Secretary (Ms. Patricia Nyaundi):** Thank you, Mr. Chweya. I am aware that for the Judiciary, under the Judicial Service Act, they have established the National Council for Provincial Administration and, I think your Ministry is represented by the Commissioner of Prisons. Do you think that the prisons will benefit from the statutory body that might bring together various stakeholders as in the case of the Judicial Service Commission (JSC) and Judicial Administration, to compel them to meet regularly and develop policies for prisons administration?

**Dr. Ludeki Chweya:** Yes. I think it will be better to institutionalize that co-operation so that it is not an ad hoc affair. Also, I should have said that we have the court users committees in the districts and they can also be part of that institutionalized process.

**The Commission Secretary (Ms. Patricia Nyaundi):** In terms of special needs, you have mentioned mothers who either come to prison with young infants or deliver infants in the prisons. Is there a policy position with regard to, for instance, persons with terminal illness, persons living with disabilities and, maybe persons living with HIV/AIDS?

**Dr. Ludeki Chweya:** Yes we have. In strengthening our health care programmes, we took care of that fact and we make special provisions for such inmates. For example, inmates with HIV/AIDS condition have been put on special diet. If you visited a prison at lunch time, you will notice that there is food served in three categories. There are meals for the regular prisoners, children who accompany their mothers to prisons and then meals for inmates with medical conditions.

**The Commission Secretary (Ms. Patricia Nyaundi):** I know this is information that we can get later on. But, for instance, the females; is there a specific budgetary allocation for the procurement of sanitary towels?

**Dr. Ludeki Chweya:** Yes there are. We have a budget for that.

**The Commission Secretary (Ms. Patricia Nyaundi):** Thank you, Mr. Ludeki. What is the budgetary allocation per day to feed prisoners?

**Dr. Ludeki Chweya:** Actually we spend about--- The price of food keeps fluctuating. For example, last year a bag of maize initially cost us Kshs3, 000 and by July, it went up to Kshs5, 000 or Kshs6, 000. With the cost fluctuations, you cannot have a static figure. But on average we spend about Kshs170 on every inmate per day. Now, this translates to about Kshs9 million per day on food alone.

In many cases, that is more than what is allocated and so we end up with pending bills in money that we owe suppliers. So, it does not lead to the provision of less food, it only leads to us accumulating debts to our suppliers.

**The Commission Secretary (Ms. Patricia Nyaundi):** The administration of prisons in this country is guided by the Prisons Act. Having looked at that Act, are there specific recommendations with regard to its amendment?

**Dr. Ludeki Chweya:** First of all, the new Constitution required us to develop a law that concerns the rights of prisoners or people who are detained. The Vice-President appointed a taskforce which has produced a draft of the amendments. I think in another two weeks we will do a stakeholders' workshops and they will subsequently pass over the document to the Cabinet, CIC and then to Parliament so that, that becomes law. So, that takes care of a lot of what we might have wanted to do in so far as the Prisons Act is concerned.

Then recently, we thought that as part of the reform programme, we activate the parole system. The parole system is provided for in the law, which has never been implemented at all. So, we thought we should implement it. The rules that govern the parole system have not been gazetted. So, we sent our legal officers for a retreat to provide draft rules which the Minister can then gazette and that way, I think we would have taken care of the inadequacies in the law. So, revision of the law is a continuous process and if at any time we find that there is a clause in the law that needs to be reviewed, then we can do so. But

the problem with regard to the prison service was not the law as such; instead it was about implementation of that law in a proper way.

**The Commission Secretary** (Ms. Patricia Nyaundi): Thank you. In my final question a number of persons who have recorded statements with the Commission are persons who were detained for political reasons. This was from the 1970s during the tenure of the first and second Presidents of Kenya. A number of them had detention writs signed by the Vice-President and Minister for Home Affairs then. I am wondering, as a matter of policy, is there a document one would make reference to, in order to determine the circumstances under which persons were detained and also define the conditions under which those people were detained?

**Dr. Ludeki Chweya:** Actually, these are things that happened a long time ago. I have never seen records or statements on that matter. But as you know the policy and whatever records that existed are checked, assessed and taken to the National Archives and then they are deposited there, if the archives officers find such documents to be of some value. So, I think the best source would be the National Archives.

**The Commission Secretary** (Ms. Patricia Nyaundi): I have here the report you referred to; that is the report of the high level Committee on the Prisons Crisis chaired by Maj. Rtd. Madson Madoka dated July, 2008. Can we admit this into the records of the Commission?

**Dr. Ludeki Chweya:** Yes, you may.

**The Commission Secretary** (Ms. Patricia Nyaundi): Presiding Chair, I pray that you admit this into the records of the Commission.

**The Presiding Chair** (Commissioner Farah): Admitted as prayed.

**The Commission Secretary** (Ms. Patricia Nyaundi): Thank you, Presiding Chair. That is all I had for this witness.

**The Presiding Chair** (Commissioner Farah): Thank you very much, Dr. Ludeki Chweya, for your good presentation. I now hand you over to the Commissioners for any clarifications they may wish to seek.

I will start with my left this time. Commissioner Dinka!

**Commissioner Dinka:** Thank you, Dr. Ludeki. Your testimony has been very enlightening and systematic.

I just want to ask you a few questions. How many prisons would you say exist in Kenya?

**Dr. Ludeki Chweya:** Thank you. As I said, when the prisons authorities come here they will give you the exact number. But I know that, when we started the reform---

**The Presiding Chair** (Commissioner Farah): Let me just interrupt a little bit, Commissioner Dinka. In the interest of time, I would request that you ask questions and the witness writes them down and then answers.

**Commissioner Dinka:** That was my first question, but in connection with it, how would you rate library facilities, for example, in prisons like Kamiti Maximum Prison, Naivasha and the rest? You said that people are being sent to school, provided with educational facilities, but do they have some library facilities?

The other question I want to ask you is about health. You said that there are some clinics within prisons and then inmates go to Kenyatta National Hospital for treatment. How good is the toilet and showering points in each of these places, for example, the ratio of showering points and toilets to inmates?

My third question is how do you deal with gangs who do all kinds of tricks with mobile phones from prisons? Do you isolate or do you mix them, people like rapists, those who defile children and so on? These are my questions. Thank you.

**Commissioner Chawatama:** Thank you for your testimony. In your opening remarks, you mentioned that there was a strike. So that was already the first challenge. April, 2008 just after post-election violence, I can just imagine the work of the police and at the prison. As it relates to prison, maybe, you can share with us a little bit of some of the challenges that faced you as a result of this event.

Secondly, when you talked about the prison officers, you talked about lack of uniforms; the fact that there was a lot of indiscipline, you touched on promotions and housing, but you did not touch on salaries. I think in terms of morale, this is a real issue. Going back to health facilities, who mans these health facilities and what is the budgetary allocation for medicine or equipment?

**The Presiding Chair** (Commissioner Farah): Please respond to those and then we go to the next.

**Dr. Ludeki Chweya:** Thank you very much. I know that healthcare is very important in our prisons because we hold a concentration of people in one place. So, sanitary conditions are a critical matter. When you see the Madoka Report it showed that sanitary conditions were very poor. One of the highlights of the bad conditions was that prisoners used bucket toilets. So, several of them would use it. When the bucket is full then one would transport it, dispose and then bring it back. So, this was one of the first corrections we had to make.

I remember committing about Kshs150 million to eradicate bucket toilet system and introduce modern flush toilet system. So, that has now improved.

Regarding indiscipline as mentioned in the Madoka Report, one of the problems was that some officers facilitated entry of contraband goods such as cell phones into the prisons. So, we moved very quickly to stamp out that. Today, these would be very isolated cases. Just like in my experience, they still happen in all prisons across the world. But it is no longer a problem. In fact, we even have developed the dog unit and they are able to pick out these things.

Regarding isolation, we have tried to cater for this. There are maybe inmates who are violent. Those ones we have to cater for them differently. Those with mental health conditions, we cater for them separately and so on. So, we try to do this, although in some cases we have been criticised wrongfully that we give special conditions for some inmates, meaning privileged conditions. But that normally is not the case. All that we want to protect is either the individual or the rest.

Concerning Judge Getrude's questions, you see for the prisons we hold people who are sent to us by the courts, whether in remand or as convicted offenders. These days even people convicted of piracy are brought to us. So, from our standpoint, it does not matter what the individual did out there. Our work is to rehabilitate the individual. So, we cannot quite say this category of offenders would be coming as a result of post-election violence.

**Commissioner Chawatama:** My question was not the nature of the offences. You know you are getting into a new phase and there is the strike and at the same time, there was a big event that had taken place. So, it was maybe a difficult or unusual time. So, basically it was more of your experience as the person who was taking up those challenges at such a time.

**Dr. Ludeki Chweya:** I am sorry for misunderstanding your question. Well let me see. I am not sure there was any major challenge arising from the circumstances of the time. The challenge was simply trying to turn around an institution that was so fixated in a certain way of doing things, which was not the right way and had to be changed. So, clearly, there were moments of worry as to whether the radical changes we were introducing would be welcome, particularly by the officers. But fortunately, we were able to navigate that and so far, the officers themselves have since become the champions of the desired change that we set out to introduce.

Concerning salaries, it is true I needed to have talked about that because it is critical as far as morale is concerned. About two years ago, the Government set up a Committee to look into the terms and conditions, including remuneration of the police force. I remember writing to the Head of Public Service to request him to include the Prisons Service in the work of that Committee. Fortunately, my request was accepted. So, when the new salary structure for the Police Service was introduced, it included prison officers as well. So, today, the terms and conditions of service of prison officers is equivalent to their counterparts in the police service. Even more recently, we were able to elevate the grade of the Commissioner of Prisons to be equivalent to the grade of the Commissioner of Police. Therefore, prison officers are no longer inferior. They no longer consider

themselves to be inferior to their colleagues in the police service. Judge, I am so glad you asked this, because it is one of the major improvements that we introduced.

Concerning health facilities, the staff in these health facilities is seconded to us from the Ministry of Medical Services. So, the doctors and nurses we have are actually employees of the Ministry of Health seconded to us. Last year, we requested for authority which we got, to hire professionals in the service. This included nurses and some medical officers as well. So, we also now have our own healthcare officers to complement those seconded from the Ministry of Health.

Now, the budget for healthcare is as inadequate as the budget for all other provisions. But we are happy we are able to manage because we cater for the healthcare needs of prisoners in our facilities. But where need be, we also send them to the district and provincial hospitals. Those are catered for from the budget of the Ministry of Medical Services. Thank you.

**The Presiding Chair** (Commissioner Farah): Thank you very much. I will have Commissioner Tecla Namachanja and Commissioner Ronald Slye ask you a set of questions. Please write down as they are and then you answer them.

**The Acting Chair** (Commissioner Namachanja): Thank you *daktari* for sharing with us the information on prisons and prisoners. One of the issues I would like to know is if there is any security assessment done of prisoners coming from the sensitive areas to ensure their security while in custody. I am asking this because while we were going around, there were prisoners or remandees in one of the remand areas in western Kenya who feared for their security because they were put in the same cells with some of the remandees. They were considered enemies and they really feared for their security. That is the first question.

The second is when the prisoners are being admitted, with the threat of HIV spreading within the prison, do they undergo any blood test to find out their status before they are admitted? While you said that so much is being done to ensure that mobile phones are eradicated from the prison areas, again when we were going around, we were told that some of them are hidden in their bodies. The dogs we use are they able to detect such? The whole issue of homosexuality - I am sorry to mention this - what is being done to protect some prisoners from fellow prisoners with such behaviour? Thank you.

**Commissioner Slye:** Thank you, Dr. Ludeki. I apologise we were not given much information about your background. So, I wonder if you could just give us a brief summary of your history in terms of the different positions you have held and your professional training.

Secondly, we have heard and I have received or read some history about detentions in Kenya, starting with the colonial period. What we have heard about detention in concentration camps and the abuses that occurred, some of which were pursuant to colonial law and some of which were not. We have heard various things about similar

practices occurring after independence under both the first, second and even the third President. So, I wonder if in a brief version - I know this a big thing to ask - if you could in your own words describe the progression of detention and prison policy in Kenya, sort of highlighting major changes, major points and say near the end of the colonial period to today. I think it is obvious that what existed before independence may not exist today. If you could, certainly for me as a non-Kenyan, give us a broad brush history of the treatment of detainees and prisoners in different reforms, both steps forward and steps backwards, that would be very helpful.

Thirdly, we have been told about a detention facility at the GSU Training School in Embakasi. I wonder if that facility falls under the Prison authority or not, if it does not, I might have some additional questions.

**Dr. Ludeki Chweya:** Thank you very much for those questions. Concerning the security of prisoners--- Let me put it differently; you know our mission as far as prison service is concerned is to hold prisoners in a secure environment and in a humane environment. So, when a prisoner comes to our facility, it is the responsibility of the prison authorities to ensure that the prisoners are safe and secure.

During my time as Permanent Secretary, I have not come across a situation where the security of certain categories of inmates is under threat from another category of inmates. This problem has not come to my attention. So, that might mean it is not a serious problem because otherwise, I should have heard about it. It is the kind of problem that is so easy to solve, if it came up, because we have different accommodation halls and we can use those to segregate prisoners, if that can bring forth security.

Then, concerning HIV tests and so on, to the best of my knowledge, we cannot compel anyone to take an HIV test. I do not know where I read this, but somehow, I have known that we cannot do that, maybe it is unethical or something. But we have VCT centres in all prisons and we encourage prisoners and even officers to take these tests.

Concerning contraband, as I said before, the problem was serious and you will see it in the Madoka Report. But then, we moved in quickly to stamp it out. You know it had become a norm rather than the exception and those who are Kenyans would recall that as we moved to stamp this out, there was resistance but the law had to be implemented. Today, I think it is no longer a problem as such. Only isolated cases may be found and then these are just solved like it happens in all prisons around the world.

The dogs have helped a lot, because they can pick items like drugs and phones. I think the prison officers would come and explain how it works.

Concerning homosexuality, you know, I have heard about it; well just like I have heard about it in the rest of the society and the community, because you know prison is a microcosm of the larger society. So, whatever problems you see in society out there, a little of them would be reflected in the prison as well, because it is the same society. But we know that prisoners are under care and we have to protect them. So, we are now in the

process of setting up a CCTV system. Right now, the contractor is on site at Kamiti Prison installing CCTV facilities. This can help with surveillance day and night and I am sure this would help.

Prof. Slye's questions; he wants to know a little bit of my background. Just very briefly, I went to school here in Kenya. I have a Bachelor's degree in Political Science. I did my Masters in the University of Nairobi again. Then, I was hired to teach at that university before I went for my PhD studies at Queens University in Canada. I returned to continue teaching at the university and I rose to become senior lecturer in political science before I was appointed Permanent Secretary in 2008. But there is one thing I skipped, while I was waiting for Masters Results, I was employed as personnel officer at the Prisons Headquarters. I was a Personnel Officer there for a few months but I never visited any prison. So I did not know what was happening over there at that time. Now, I am Permanent Secretary, on leave of absence from the University of Nairobi. So, when my tour of duty as PS is over, I will return to my teaching job at the university.

Concerning the GSU, this is a detachment of the police service. Therefore, it is not part of the Prisons Service. Thank you.

**The Presiding Chair** (Commissioner Farah): Thank you very much, Dr. Chweya. As we have been going around the country, we have been asked by some minority communities why their officers are not rising to higher positions in Government, and from your name, I notice you are from the Coast.

**Dr. Ludeki Chweya:** No, I should have corrected. I come from Maragoli.

**The Presiding Chair** (Commissioner Farah): But you share the same name with Giriamas. Anyway, thank you very much for your presentation. Even in western, where you come from it is good that you are a PS. I have no question but I want you to write a paper on prisons, while you are the PS, because from your presentation, there are a lot of challenges within the Prison Service.

The Prison Service problems are in two forms; the prison staff and the inmates. I am glad that you have fought very hard while you are PS in ensuring that the salary is reviewed and it has been equated to that of the police. Maybe, at the top level the Commissioner of Prisons is now equated to that of Commissioner of Police. You need to do so all the way down and at the same time, with special emphasis on the hazards that the prison staff face in dealing with criminals for which they should be remunerated properly.

Remember, a prison is not a hotel, we were told. Therefore, we do not want Kenyans to go there all the time. But at the same time, we want Kenyans who go there to come out with benefits in order to become good citizens and not to go back there again. They want to come out with skills, properly trained, properly corrected, and they have been made to understand how to live within the society. So, there are special hazards for the prison staff and especially they lack skills for dealing with those whom they are supposed to correct.



We noticed when Marsden Madoka's Committee was going round, some of the prison staff were living in worse conditions than the inmates. I am glad in the report there; I can see some new buildings compared to some other bad ones. So, during your tour of duty, you should strive to ensure that their service has improved. When their service and remuneration improve, they would do a good job. The Kshs170 per person per day is too low. This country has money and, therefore, whereas we do not want to make it a five star hotel, a research should be done with a view to ensuring that a small but balanced diet that would stop the inmates from getting diseases is given.

If you gave me Kshs170 for *sima* alone, at the end of the month, I would become sick because it is not a balanced diet. You should increase the figure and ensure that they get a proper diet. This way, you will save the country a big health bill.

I thank you very much for your presentation. On police matters, do write a paper on how the staff should be accommodated. Also let us see how the inmates should be accommodated. We have taken prisons to be places for punishment where we have a cycle of inmates coming in and going out. So, I challenge you to write those two papers and present them to the Treasury. You should push your case the way the police pushed their case.

Thank you very much. I think as far as the operations are concerned, we shall hear from the other officers. So, Leader of Evidence, you may stand down the witness and bring the other witness.

*(Ms. Rose Muturi took the oath)*

**The Commission Secretary** (Ms. Nyaundi): Welcome Madam Rose Muturi. For the sake of record, I will ask you to state your name and your rank.

**Ms. Rose Muturi:** My name is Rose Muturi. I am a Deputy Commissioner of Police. I am a Director in Charge of Administration.

**The Commission Secretary** (Ms. Nyaundi): Thank you and welcome. We appreciate your participation. You have said that you are an Assistant Director in charge of Administration?

**Ms. Rose Muturi:** Yes.

**The Commission Secretary** (Ms. Nyaundi): I will now invite you to give a presentation to this Commission highlighting the organizational structure that is the staff component of the Prisons Department at the various levels of management. We would also like to hear from you the prisons population as opposed to the wardens. We would also like to hear from you about the plans you have at the prisons including education, training and other rehabilitation programmes for prisoners. We would like to hear issues concerning access to health for both remandees and inmates. We are concerned about the gross

violation of human rights and injustices and in our communication to you, we had specially sought that you inform us of persons who were detained at the prisons in relation to the 1982 coup, Mwakenya and other political detainees.

**The Presiding Chair** (Commissioner Farah): Leader of Evidence, if I may interrupt, for the interest of time, Commissioners feel that if she goes through the structure step by step, that may be time consuming. However, if she has a copy she could give it to the Commissioners and you can see how to get information from her in the interest of saving time.

**The Commission Secretary** (Ms. Nyaundi): Thank you, I am well guided.

The witness informs me that she has a short presentation to make and she will avail additional information to the Commission in the course of next week. She does not have additional copies of her presentation and, therefore, I am unable to furnish you with them but I will ask that you allow her to proceed.

**The Presiding Chair** (Commissioner Farah): Proceed, please.

**Ms. Rose Muturi:** I will give a brief of the Kenya Prisons Service. The Permanent Secretary has ably given an overview of how we look like and what we do. Therefore, mine will be a summary. As I had said, I did not have a written report but that will be handed over to the Commission next week.

The Kenya Prisons Service is a Department under the Office of the Vice-President and Ministry of Home Affairs. It was established in 1911 and the Department is headed by a Commissioner of Prisons who is charged with powers and responsibilities of ensuring smooth administration of the service. Our mission is to contain offenders in humane, safe conditions in order to facilitate administration of justice, rehabilitation for community protection; and our vision is corrections in Africa and beyond. Our motto is “rehabilitation and justice”, in Kiswahili, *kurekebisha na haki*. Our core mandate as a Department is vested in Section 90 and 92 of the laws of Kenya. This empowers the prisons service to perform the following functions.

Containment and keeping in safe custody of prisoners; rehabilitation and correction of prisoners through training; facilitation of administration of justice through the production of prisoners to courts; recruiting, training and developing suitable personnel for the service and provision of basic human needs for prisoners. The Acts are supplemented by subsidiary legislation, prison rules as well as other international instruments.

Currently, we have 107 prisons that include two borstal institutions. A borstal institution contains inmates who have attained age 15 but not 18 and then we have one youth corrective center for offenders who have attained 18 but are less than 21. We have 87 institutions for male offenders and 18 for female offenders. We do not have a borstal institution for girls. The average prisons population is 53,073 as it stood today with 364 children accompanying their mothers. About 60 per cent of the prisoners in custody are

convicted, serving different sentences while 4 per cent are waiting trial; 5 per cent of these populations are female while 2 per cent are juveniles. The established prisons capacity to-date stands at 22,000 as per 40 square feet as per the UN standards requirements. This results in increased expenditure incurred in maintenance of prisoners through provision of bedding, clothing, feeding, and medication, transportation to courts, water and electricity among others. As the Permanent Secretary said, the Government spends Kshs9 million daily to maintain prisoners.

There are 20,428 members of staff both uniformed and non-uniformed. The Department has 15 uniformed ranking structures; the lowest is the warden and wardress while the highest is the Commissioner of Prisons. The recruit wardens are the lowest and they go for nine months initial training while cadet officers who join at that level undergo 15 months training. Therefore, staff to prisoner's ratio currently, stands at 1:3 against an international recommended threshold of 1:2. The Department has embarked on professionalization of its services through recruitment of officers with specialized qualifications including medical officers, lawyers, and social workers, among others.

Prisons are classified as follows. We have the maximum prison, for instance, Kamiti, Naivasha and Shimo La Tewa. We have medium security prisons that hold middle level prisoners and the open prisons which are majorly farm prisons that have offenders who have committed offences of sentences of up to six months. The classification is, therefore, determined by the length of service, nature of previous offences among other considerations. Maximum prisons hold prisoners serving over seven years, life sentences and other prisoners and other dangerous prisoners that are of high security risk. Medium security prisons hold prisoners serving seven years and below and semi closed prisons hold prisoners serving six months and below. Therefore, prisoners can be classified as high risk and low risk, based on the offences committed.

I will go to the area of key reforms that have been undertaken. We have an improved programme for rehabilitation that includes what we call remote parenting and the Permanent Secretary gave an overview on it. We also have introduced new humane staff and prisoners' uniforms and professionalization of service by recruiting officers with special skills and enhanced collaboration with stakeholders. There is general improvement on housing though much needs to be done in that area. We have improved terms and conditions of service, particularly what the Permanent Secretary highlighted in the area of salaries. The utilization of community service order by the judiciary has helped to reduce prison congestion and the formation of a new directorate that deals with the offender rehabilitation. Therefore, the challenges we are facing, one, is overcrowding. Some of the causes of overcrowding are delay in administration of justice, negative perception towards non-custodial sentencing and even generally for those who offend, as they go back to the society, changing crime trend.

Currently, we have terrorists, piracy and overcrowding which lead to lack of provision of basic needs and facilities. Re-offending is another challenge. We have challenges in housing and transport facilities. Those are some of the major challenges within the Prisons Department.

Some of the measures and the way forward are expansion and modernization of the existing facility and the continued use of community services. We have embarked on rehabilitation of prisons to meet individual needs of the inmates and also the changing crimes trends and enhance collaboration among stakeholders and also the criminal justice system.

Generally, the open-door policing that has come up has opened up prisons in terms of the general public understanding of what prisons stand for, what we do and our general roles in supporting prisoners. I think the role that prison warders play is misunderstood. Many people think that once one is committed to prison, he or she belongs to prison officers. The community should understand that they have a role in rehabilitation. Offending is as a result of the community and, therefore, it is our collective role to make sure that we support rehabilitation programmes and support those who have completed their prison sentence to lead a meaningful life.

**The Commission Secretary** (Ms. Nyaundi): Thank you very much, Madam Muturi. Before I ask you any questions, I will invite the clerk to administer an oath to Florence Kerubo. I will then invite Florence Kerubo to introduce herself for the record, her rank and position within the Prisons Department.

*(Ms. Florence Kerubo Omundi took the oath)*

**Ms. Florence Kerubo Omundi:** My names are Florence Kerubo Omundi. I am a Senior Assistant Commissioner of Prisons. I am the Director, Gender, NGOs and Sports in the Ministry. I will be very brief and will restrict myself to vulnerable persons in our prisons. Basically, the Kenya Prisons Service derives her mandate from the Prisons Act Chapter 90. In this, we are mandated to contain offenders in safe and humane custodies, to also take them to court and in the process we will be protecting the community and at the same time rehabilitating these people. This will help them in their integration at the expiry of their prison term.

My Permanent Secretary and the Director of Administration has given very good overview on the general administration of service. I will basically say that in 107 penal institutions, 18 for women are as today holding 2,551 female offenders and 364 children accompanying their mothers in prison. The Department has taken steps to ensure that the children accompanying their mothers who have not committed any offence are taken care of and the Government has given a budget for this. Due to the challenges that have already been explained, we also ensure that we are in good partnership with the public and even the international community so that we give the best to these children.

According to the Convention on the Rights of the Child (CRC) and the Children Act, in all circumstances, the best interest of the child comes first. So, if the mother comes in with the child and because she has to serve the sentence, according to the provisions of the Act, we try and give the child the best accommodation and a balanced diet. We also try to ensure that they get good health and recently, in partnership with Faraja Trust and

the Austrian Embassy among other organizations, the Prisons Department has for the first time since the enactment of the prisons put up a model day care centre which is under construction at Langata Women Prison.

The Langata Women Prison is a maximum prison for women offenders in this country. It is the only one of its kind in this country. So, if this is a maximum prison for women, then it means that if we have a woman serving a life sentence and she has a child below the age of four accompanying her, the child would be staying with the mother in the same circumstances. So, the child is like condemned with the mother. This is why we realized the need to start the Montessori based Early Childhood Education Centre. We will also put up other centres in the country.

Secondly, I will talk about the other special needs offenders. We have talked about the open days in the remote parenting. This is to address the special needs of those people so that when they are serving their sentences, through remote parenting, they can remotely monitor the progress of their families, especially the children who have been left at home. This helps in the rehabilitation of the offenders.

I also want to talk about persons with disabilities. With regard to persons with disabilities, the Department has put up disability friendly accommodation blocks. We have put up ramps and we have allowed assistive devices like spectacles. While people think it is prestigious to wear spectacles, in the Prisons, we have realized that this is a device that helps someone to see properly. Now, prisoners can be allowed to stay in with their walking sticks, crutches and wheel chairs because this facilitates their movement in prisons. We are moving from punitive to corrective approach management in prisons. We realized that in the past few years, these assistive devices were regarded as security items.

As the Permanent Secretary has already mentioned, just imagine when we had bucket toilets in our prison. Think of a prisoner whose foot has been amputated and how he was going to use a bucket as a toilet. With the congestion, think about how he would crawl on urine. When you look at all these, you will realise that as much as we may not have done much as a Department, we have moved. We have embraced reforms. We are also saying that if a woman comes in and completely cannot hand over her baby to the family, we facilitate foster-parenting with the assistance of the Children Department among other things. We have also mentioned that we have the Department of offender rehabilitation. However, amongst the other reforms, we also have the Directorate of Gender, NGOs and Sports. The Department of Prisons has these services, the Directorate of Planning and Development, the Directorate of Legal and Human Rights, Research and Statistics. We give designated data analysis and other statistics to the Government for purposes of planning and to inform policy.

I also want to say that in the recent past, to achieve the one-third affirmative action, in the last recruitment that was in 2010, we brought in 36 per cent women professionals. These are professional cadre in various disciplines. We were able to achieve, at the lowest level, 33 per cent, women against men. You will also realise that the Department is quite balanced in terms of gender mainstreaming and in disability mainstreaming. For officers

who are disabled in the course of duty, we have tried to rehabilitate them and have them continue working in the service.

Finally, we have a draft policy on Gender and Disability which has already been cascaded to all the officers. You saw in the papers on Tuesday that the Department will promote officers who are already serving. If you read carefully, you must have seen that it was mentioned that we will continue regional balance, gender and persons with disabilities.

Finally, prisoners come from societies with different challenges. Prisons also have their challenges. We are saying that the society and everybody should come out and assist the Department to take care of prisoners. Once rehabilitated, we are making a passionate appeal, please, accept these people. As much as there is stigma, victimization, when we assure you that we have done our best, just believe that we have done our best. Accept the people back and also for the petty offenders, the Judiciary should consider making use of non-custodial sentences so that the Department can concentrate fully on the rehabilitation of the high risk offenders. That is where we ensure safety for the community and even for these persons.

Thank you. That is the end of my presentation.

**The Commission Secretary** (Ms. Nyaundi): Thank you very much both Madam Muturi and Madam Kerubo. We appreciate those eloquent presentations. Madam Muturi, I will ask you a few questions. Your presentation has focused on the present initiatives by the Prison Services Department. What will you say are the lessons you have learnt from the past that have influenced some of the reforms that you are currently undertaking?

**Ms. Rose Muturi:** Yes, when we talk about the open door policy, this is an emotional word because while prisoners were locked, we believe that the staffs were also locked. Before the year 2000, the Prisons were a no-go zone for everybody. The prisoners suffered and we also suffered because birds of the same feather flock together. The opening up alone and allowing the community to come in and see what it was blaming us for in terms of the injustices in the prisons is a big step. That informs us where we are coming from.

And seeing what it was, in terms of the injustices that time in the prison, I think for us it is a big step. That informs us where we are coming from and the need to embark on vigorous reforms to see that as we improve the conditions of the prisoners' lives, we are equally improving the quality of life of the prison officers and generally the community.

**The Commission Secretary** (Ms. Nyaundi): Thank you very much. In the course of our work and statements we have received and persons who have appeared before the Commission, the image that has been created of prisons as institutions is that they really were homes to violations of human rights especially for those who were detained for political reasons. I do not know whether in the course of your work, you have had an opportunity to review prisons records and detained persons, who were held, the

circumstances under which they were held and whether you can confirm or you have a different account of what was the situation of these persons.

**Ms. Rose Muturi:** The issue of detention was a State affair and for the period I have worked in the prisons service, I never handled those prisoners or even had access to the records and, therefore, just like the PS said, I think wherever the records are kept, I think it is important that it is looked at. That is the much I will say.

**The Commission Secretary** (Ms. Patricia Nyaundi): I do appreciate. Part of what we heard is that it would appear that when I look at the Prison Act, there is provision for those who are in custody to lodge complaints. It would appear that either this provision was not applied to those prisoners but as you have said, you do not have an active knowledge so what I would ask you is; in your understanding, do you have a record of prisoners who have made formal complaints within the prisons either against prison officers or fellow detainees?

**Mr. Rose Muturi:** We know as at now that we do not have detainees in the prisons. We all understand as Kenyans that most of these complaints were made when these prisoners had been released. We may not be having a proper documentation within the prisons but these complaints are in the public domain.

**The Commission Secretary** (Ms. Nyaundi): I think I have used the word detainee to mean anyone who is held in prison and not the political detainees. I apologize for that. What I meant is that do you keep a record in the same way that you record that these are the number of male prisoners and these are the number of females and children? Does the prison maintain a record of complaints that are made by prisoners under the Act?

**Ms. Rose Muturi:** We have a system of redress where prisoners feel their rights have been violated within the prison. We have a register where if prisoners feel either their rights have been violated or they need their issues to be looked into, they record such complaints and they are able to see the officer in charge of the institution with the complaint or the application. It is not limited to that. We have the Prevention Commanders where the same complaints can be addressed up to the level of the Commissioner.

**The Commission Secretary** (Ms. Nyaundi): With regard to funding of the prison services, the question is directed to madam Muturi; madam Kerubo had mentioned that they had got some support from the Australian Embassy and had mentioned an NGO, Faraja Trust. In terms of funding, what is the percentage of support that you get outside of Treasury?

**Mr. Rose Muturi:** This is one area we seriously need to assess. The funding that we get from our partners, as yet we do not have records clearly, that we can give this Commission but I think it is homework for us.

**The Commission Secretary** (Ms. Nyaundi): One of the things you told us from the beginning is that you would give us detailed reports later in the week. We would appreciate if it extended to your funding from non-Governmental sources. I am aware also that there was the Government's Justice and Law Order (GJLO) programme. Probably in what you will be giving the Commission later, you could also highlight how you benefitted from that initiative.

To madam Kerubo, I just have one question: I notice you are dealing with gender, NGO and sport. For the national gender machinery, one of the realizations is that when you lump gender with the NGOs, sports or other agencies, then sometimes the gender component suffers. In your experienced in the course of presiding over that, would you recommend that they remain together or there is a separation?

**Ms. Florence Kerubo Omundi:** Personally, I would say that what we have done is that we have distinctly set the sections aside such that the NGO component has officers working under it. The NGOs have also officers and sports have an officer and a council. It is because we realized they are linked especially in the uniqueness of the operations of prisons that we put them together but for us, it is working well because the Directorate generally oversees and coordinates.

**The Commission Secretary** (Ms. Nyaundi): Thank you. Commissioners will now ask you questions.

**The Presiding Chair** (Commissioner Farah): Thank you very much for your good presentation. We will ask you a block of questions. You write them down. I will start with the two Commissioners on my right; Namachanja Wanjala and Ronald Slye.

**The Acting Chair** (Commissioner Namachanja): I do not have any technical question because all this time, I have not written anything. I am just seated here looking at these two wonderful women and full of admiration for their work and the conditions under which they have been working. I am wondering; working under such conditions, how they separate their personal feelings and professional work. Maybe at the end, they could just respond to that.

I also realized that my sister Rose is MBS meaning Member of the Burning Spear. Maybe you can also talk of how you came to acquire this. I am not used to Government titles but my sister Florence, I do not know if OGW, SSCP has any meaning concerning your work. Just talk about that.

Thank you so much for coming before us to share what you have shared and thank you for the good and difficult work that you are doing.

**Commissioner Slye:** I also wanted to thank both of the speakers for their testimony here before this Commission and also for as my colleague said, the work that you are doing to reform the prison's system both focusing on women but also more generally. I just had two questions. The first, you had mentioned that a certain per cent of those in prisons are



waiting trial and I do not know whether you know this or not, but I am wondering if you know what the average stay of that percentage is. How long they would be in prison before coming to trial. The second is; we have been told about and maybe I am a little ignorant not being from Kenya, that there are other detention facilities in Kenya as well. I had specifically asked the PS about one at the GSU Training School and he educated me that that would be under the police and not under your authority. I wonder if you have a sense of how many other detention facilities like that exist outside of the prison system and also whether or what are the modalities for transferring detainees from that system into the regular prison system. Thank you.

**The Acting Chair** (Commissioner Namachanja): Proceed to answer those two questions.

**Ms. Rose Muturi:** I will start with the last question. I did mention that 40 per cent of the total population of prisoners is remandees awaiting trial. To the average period, it would even go up to 3 or 4 years depending on the offence but that is now reducing. On the issue of detention, I did not get you well particularly when you are talking of detention out of prison. Maybe we are sort of restricted to the prison and not anything outside the prison.

**Commissioner Slye:** Sure, I apologize. I understand that we have been told about different detention facilities that are administered by the Government but do not seem to fall under the prison authority. One specifically we were recently told about was at the GSU Training School in Embakasi. So I wanted to know how familiar you were with those other facilities even though they do not come under your authority. I assumed that individuals that are detained in those facilities sometimes or maybe every time, would eventually make themselves into your system because they are awaiting trial, for example. My understanding is that some of these detention facilities are run by the police so I assume that the police hold the individuals there while they are being questioned. That would be my guess and then at some point, they may be handed over to the more traditional prison systems as they make their way through the justice system. Was I clear?

**Ms. Rose Muturi:** The detention facilities that we know of out of prison are remandees under police custody. Any other detention beyond that, officially, I am not aware or as a department we may not be aware. For the Acting Chair, Madam Namachanja, I also felt moved when you asked that question. It has not been easy separating our own emotions and day to day handling people who pour their hearts to you and it will never change for the entire service. It is one of the emotional challenges that prison officers go through. That is why most of the prison officers both senior and junior are undertaking counseling courses but you have to reach within yourself before you reach the inmate.

As a result, with time, we are able to separate and offer the emotional support that they need. It has to be a calling to do prison work with passion and influence the prisoners with your character. It is a calling and a deliberate decision that one has to make. I earned by MBS in 2010 maybe as a result of what I have done, I was the first woman provincial commander in Kenya Prisons so far. During the open door policy and when we were just opening up prisons, I was the officer in charge of Langata Women Prison. The resistance

that we also met from our own fellow colleagues in terms of saying time has come for us to change was not an easy task, but together we have moved a step. I have also held various positions of administration and currently with what I am doing; I believe my boss made the right decision to award me that MBS based on that.

**The Presiding Chair** (Commissioner Farah): Thank you for answering those questions very candidly. I now turn to Ambassador and Judge to ask their set of questions.

**Commissioner Dinka:** I have two questions. First of all, thank you very much for your testimony. My first question is, you mentioned that a child is born in prison and stays with its mother until he or she is four years old. What happens after the child is four years old if the mother has to go for the next five more years in prison? Does the child stay there or is there any different arrangement with schooling and everything else? My second question is about the training. A prisoner is trained, finishes his courses, gets his certificate from the appropriate agencies and yet again he has to stay in prison if he has not finished or he is not even about to finish his term. In that case, let us say he is a first class mechanic or a first class plumber, would he be able to go out with say a guard and work and come back to prison or would he be paid for what he does now that he has his certificate in prison? What do you do with these skilled prisoners that you have taught and yet once he gets his certificate, he has nothing to do?

**Commissioner Chawatama:** Thank you very much for your testimonies. As a judge, I have had a lot of opportunity to work with prisons. I belong to prison fellowship and have also worked with juveniles and I know firsthand the challenges that you face and that is why when the PS did not mention salaries, I quickly had to mention salaries because I know that you are very badly paid for the very hard work that you do. I have a few questions for you and my first question is; you mentioned a human rights officer. How are the inmates utilizing their services or is this person there for administration?

Secondly, I have had an opportunity to look at the report on prison crisis dated July 2008. Since then, how many new prisons have been built or how many old ones have been rehabilitated or extended? My third question relates to visiting justices. Do you at the beginning of every year receive a schedule from the judiciary on the visits by judges or do you have a complaint that judges are not visiting as mandated by the law? Another question is I do not know whether you have had an opportunity to read this report. Is there anything that you would have added if you had been one of the committee members who had sat on this meeting? The last question is; 40 per cent of those in your custody are remandees. That is a very high percentage. Are you satisfied that each and every person has a court date and if not, what do you do when there is no date that has been given for them to attend court? I thank you very much.

**Ms. Florence Kerubo Omundi:** Thank you very much, Presiding Chair and Commissioners. I would first like to respond to Ambassador Dinka's questions. When a mother comes to prison and she is expecting or accompanied by a baby, the baby is mandated by law to stay the four years. On attaining four years of age, if the child would not have been taken by relatives, then through the welfare officers, the department hands

over the child to a children's home and then they keep monitoring the progress of the child. Now we are also working on fostering because they cannot stay more than that.

On training, what we do as a department is to ensure that a prisoner is kept busy. They go through recreational activities and they are given training. This helps in the process of rehabilitation and it also helps in their management while they are in the prisons because you realize that managing these people can be very difficult and challenging. After they have gotten all these skills, the most that we can do is to make sure that we utilize whatever skills in the prison and then some of the prisoners get involved in hobbies and handcrafts skills and 30 per cent of the money they raise from this, goes to their accounts. Apart from those exceptional cases, where appeal of a prisoner can go through on the basis of rehabilitation, like the one who did exemplarily well in his academics, they just remain in prison with those skills and this is a challenge to us. With the power of mercy, we are hoping that some of these cases will be reviewed and released.

I want to move to Judge Gertrude and to appreciate that she actually has a feel of what it feels like to work in prison and that she is also a member of the prisons fellowship. If for example, I was a committee member in the prison crisis committee, one thing that I would say is that conditions for both staff and inmates are improved 300 per cent. The salaries are equally looked into as a matter of urgency and issues of complaints and others are addressed immediately because this would make the working in prison become much easier. You have asked me about the human rights officers in prison. Yes they assist in helping the prisoners do their appeals. We also have lawyers who give pro bono services. We actually have paralegals in prisons among others. When we mentioned about the recruitment of professionals and we said that they were 36 per cent as at the last recruitment, actually we had quite a number of lawyers in this group so the lawyers are not doing administrative duties; they are assisting the prisoners and the staff. Since the prison crisis, basically, it is like we have had all the prisons rehabilitated and we have had eight new prisons. This is addressing congestion and addressing better living conditions for the inmates and the staff as well because we have had new housing units for our staff.

For the 40 per cent remandees, we check that each of them have a court date. We do not accept them unless they have a date to appear in court and in case of any delay, the officer in charge will ensure that they get hold of the judiciary immediately. I am also happy to report that part of the reforms put in place is the court users committees. This is between the judiciary and the prison's management.

Presiding Chair, I am sorry Madam Namachanja is not here but I will still respond to one of her concerns. She actually wondered aloud how we are managing as women in these very challenging working conditions. I want to concur with my colleague that it has not been easy. We have come a long way and as a woman, what I have had to do is to look at my triple role as wife and a mother. In this sense, I have a very supportive husband. He actually reminds me that I am supposed to go to work and he even takes me through the Prisons Act at times. As a prisons officer, I have had to do this because it is a call and I have a passion for prisons work. I think this why in 2006, while I was deputy commandant in the Prisons Staff Training College, the then Commissioner of Prisons

recommended that I should be awarded a state commendation, and the Head of State awarded me the Order of the Grand Warrior of Kenya (OGW). I thought that this was for all women of Kenya and especially for a young woman who had gone to school then. My colleagues thought it was actually a joke to work in prison but I am one person who has embraced education and I want to tell all Kenya Prisons Service officers, both women and men, please be empowered academically. That is when you can deal with this challenge of rehabilitating prisoners, people rejected by society; the ones called gangsters and society believes that even these women who are prison officers are going to help them rehabilitate the criminals they cannot face out there. We need to be armed.

I have also had to depend on God to be able to do this work. I separate every aspect of the work that I do. When I am a wife and a mother, I do that faithfully. When I get to my office, I put on my uniform, take over the discipline and I become a disciplined and uniformed officer. When I go to the other businesses that I have to do, I equally do them without mixing issues. I have had to separate my different roles.

Thank you.

**Commissioner Chawatama:** There was a question of visiting justices whether at the beginning of the year you get a schedule or whether judges are faithfully visiting prisoners and listening to their complaints. It is important for us to know because the Judiciary will be coming and if this is an issue then it is one we are going to take up with them.

**Ms. Florence Kerubo Omondi:** I am not informed of a schedule from the Judiciary. What I know for sure is that they do visit although not in a programmed way. We sometimes receive reports and sometimes we do not. Maybe this thing needs to be streamlined so that we have that schedule then we can hold them accountable so that they can also keep us on our toes.

Thank you.

**The Presiding Chair** (Commissioner Farah): Thank you very much for your good presentations. This leaves me without any questions because they have all been asked. I just want to take note of the fact that your new Act Clause 20 prohibits you from striking. Therefore, we shall not have any repeat of another strike like the one the PS found you in. That is also good reform.

Leader of Evidence, I think we have finished with these good witnesses. You may stand them down and bring the next witness.

**The Commission Secretary** (Ms. Nyaundi): Commissioners, as they leave, I pray that you admit the two presentations onto the records of the Commission.

**The Presiding Chair** (Commissioner Farah): Admitted as prayed.

*(Ms. Jane Wanjiru Kuria took the oath)*

**The Commission Secretary** (Ms. Nyaundi): Thank you and welcome to the Commission. I ask that for the record, you could introduce yourself, your name and current occupation.

**Ms. Jane Wanjiru Kuria:** Good afternoon everybody. Thank you the panel for allowing me to do this during the lunch hour. My name is Jane Wanjiru Kuria working for a charity organization called Faraja Trust. I am currently the coordinator.

**The Commission Secretary** (Ms. Nyaundi): Thank you Jane. You were selected because your organization focuses on running programmes for children who are living in prisons. I now invite you to make a presentation to the Commission.

**Ms. Jane Wanjiru Kuria:** Thank you. As I said, Faraja has been there for almost ten years. Our programmes are cross-cutting in all prisons but mainly the ones in Nairobi. We also work with other vulnerable members of the society including refugees. The children's programme is somehow very new in the prisons for us. But having worked in Lang'ata for ten years we found that children accompanying their mothers are somehow ignored. These children stay with their mothers the whole day, sometimes in the cells and they also sleep with mothers. We felt that this was not right.

The Prisons Act has allowed children to be there with their mothers at the tender age of zero to four years maybe for the sake of bonding. What we have done as a charity, we have decided to put up an early childhood facility. This was just launched this month and we are going to construct that building there. The budget is about Kshs3 million and we are saying that we would like the prisons to provide qualified teachers so that these children can be with somebody else the whole day, go through the normal processes of growth and then come to their mothers in the evening. This is because obviously staying with your mother the whole day with other inmates; these children pick up so much from these people. Unfortunately, research has shown that some of these children become criminals later on in life. That is just between the ages of zero to four years.

In prisons we also have other children who are below 18 years because the Children's Act recognizes below 18 years, you are a child. In the prisons that have these youth, we visit them; we give them some life skills so that once out of prison they can have a second chance to at least become a better person in the society. In the remands in the prisons, unfortunately, you will find children of even 12 years of age. We are hoping that we can help some of these people because, again, you will find the youth in the prisons graduate to be in the main prisons later on. There is a challenge for the girls who are below 18 years because there is no institution for girls. Unfortunately, you find very few of them in the main prison of women. Apart from the children's programme, our other focus has been on the women. Unfortunately, most women in the prisons are single mothers. Therefore, once in the prison the children are left with nobody to take care of them. We are trying to give skills to these women so that when they are out of prison they should take care of their children so that they do not go back to prison again.

As a charity which is non-governmental, we do not give funds to the prisons. We do the work ourselves. Even the constructions we do in prisons, we will get people to do it but obviously in partnership with the prisons. For the child facility in Lang'ata, the German Embassy is helping us to fund it so that we do the work directly ourselves. We also work with some men prisons but unfortunately sometimes we do so much which is not supposed to be done by us. For example, there were some deaths at Kamiti Maximum Prison and the reason was probably dirt and health. We thought we could still help them do their kitchen. In 2010 we helped renovate their kitchen. This was done the last time 50 years ago. We are trying not to limit ourselves to children only but all the offenders need help.

I think that was my brief presentation. We basically partner with the prisons department.

Thank you.

**The Commission Secretary** (Ms. Nyaundi): Thank you very much Jane. Just a request and maybe an inquiry; have you undertaken formal research or studies to inform the work that you do?

**Ms. Jane Wanjiku Kuria:** We have not done any research as such but my work mainly is guided by the Madoka Report, the Prisons Strategic Plan, the Cap.90 and the Borstal Institutions Act because we tell ourselves that we want to help the prisons in their gaps. We have not done research as such.

**The Commission Secretary** (Ms. Nyaundi): Thank you. The Commissioners will now ask you questions.

**The Presiding Chair** (Commissioner Farah): Thank you very much for your good presentation. I will now ask the Commissioners to ask you questions. Please, note them down.

**Commissioner Dinka:** Thank you very much Jane for your testimony which has been very brief but very informative. I understand the case of children between zero to four years old but I did not get clearly what you are intending to do for the young offenders who are below the age of 18 years. They are also a very vulnerable group and from what we understand they are mixed even in the living quarters with adults. As you said they might come out worse off than when they went in. I want a little detail on that.

**Commissioner Chawatama:** Thank you very much for your presentation. I think this question is related to the question that ambassador has asked. I would like to know as an organization what you have done by speaking to the Judiciary or Ministry of Home Affairs in ensuring that girl offenders are separated from the women as per law because that is a requirement. Have you made any suggestions and when you have, what sort of responses have you got?

Secondly, going round the country we have heard of children being abandoned because their parents have died. I can well imagine that no one would want to touch any children any more of somebody who is serving a sentence. The reason is that people do not just seem to have money to feed extra mouths. So as much as you have said that there have been studies that show that children who live with their mothers in prison also become criminals, they also become criminals when they live outside because of neglect. I have been to prison, not that I was sent there but by virtue of my work. I have seen that when there is a child in prison everybody becomes a mother and they really look after these children very well. It would have been a good thing and I would suggest it as well; related to the question that the Leader of Evidence asked, we really need some research done. We need to know from you some of your findings as relates to the development of children in prisons and whether you are satisfied that the education they are accessing is okay, whether the food is okay and the preparation. Apart from the mothers themselves, we need to know the kind of preparations that the children themselves go through as they are released back to the society.

What are the views of the fathers? When the mothers are put in prison, what are you hearing? What are the fathers saying or doing? Do they abandon these children? Have you heard some success stories? I think that is it.

**Ms. Jane Wanjiku Kuria:** Can I respond to those first?

Through the Chair, I will start with Commissioners Dinka's question. The youth in the prisons are somehow put separately with the older persons but obviously if they are in the same institution, they will sooner or later somehow get in touch with each other. We have the two male borstal institutions; one in Western Province and another in the Coast Province.

What we have tried to do as *Faraja* is that, before these boys leave and they leave three times a year, we give them some life skills. We are also trying to do business start-up skills because unfortunately, most of these boys are illiterate or have dropped out of school. We try and tell them that they can do something for themselves. The only challenge is that we are not able to provide start-up support and, unfortunately, the community also does not accept them. That is the challenge we are working on but with the prisons reforms, parents are invited and they talk with their children and social workers so that a parent can at least help this child to be reintegrated into the society and help them with some support.

Those who do very well in school, because we have formal education in these institutions, *Faraja* support them to go to school. It is a bit challenging because they are very many but at the moment, we have five in secondary school and we are hoping they can pass well and help their families. That is as much as we do for the young boys.

The youth department also tries to help because the youth are very vulnerable. Most of these children, like I said, are from very broken families. Unfortunately, what the society is not doing breaks up families, and this gets them into prison.

The next question was by Commissioner Getrude; we have tried to talk to the new Chief Justice, we had a meeting with him in early March just to try and inform him of what we have seen when working in prisons. We have names of people who have been in prison or may be in the remand for very long. So hopefully, when we meet with him, we can share with him because I think the Judiciary has a very huge role to play in helping the prisons. We also have a very close relationship with the PS and his Ministry. We also give him feedback because there is what you see as a private person that the officers might not see or may think is still right.

On the girl offenders, there has been a lot of advocacy and now the prisons want to build a girl's unit so that the girls can also be put separately. We have also advocated for some two girls who are below 18 years. Fortunately, they were discharged from prisons and now they are going back to school. I think initially, in the past, girls and women were not seen as criminals and so there was nothing put for girls and women. Today, we have very many women and even girl criminals, unfortunately.

On the abandoned children, there are also other organizations like the one called the NEST. It tries to take children who have been abandoned and these are the people who help these children a bit. But there is definitely a gap there.

I think lastly, there was something I was asked on nutrition. The nutrition that children get in prison is not enough at all. You will find that the mother eats what the child may eat. This is a gap also but we understand sometimes there are challenges with the Government funding. For the women prisons that we support, we encourage farming. For example, in Lang'ata we have initiated a drip irrigated farm, a dairy goat project so that some of these foods can assist the children and other people who need special diets in prisons.

There was a question on the fathers. As I said, unfortunately, many of these women are single so there are absent fathers there. The few we have talked to, once your wife goes to prison, they are actually in shock. So, we are trying to support the fathers to be able to accept and take care of these children but it is a huge challenge there.

Thank you.

**The Presiding Chair** (Commissioner Farah): Thank you very much. I have no question for you but Prof. Slye will ask you the last question or questions then you will be free to go.

**Commissioner Slye:** My question is really a follow up with my colleagues. You had mentioned the phenomena of children between zero years and four years who are in prison because their mothers are in prison and that they are likely themselves to enter the criminal justice system. It sounds like your organization does not do that sort of research but I am wondering if you are aware of organizations here in Kenya which do research to show that sort of trend or show the trend that the judge talked about with respect to



neglected or abandoned children and even to look at the frequency within which children themselves are incarcerated because of what they have done and how they are likely to go back to the criminal justice system after they have paid their debts to the society.

**Ms. Jane Kuria:** I may not be able to name these organizations here but I am going to read something that was in the newspaper a week ago when we commissioned this childhood facility. People were interviewed and one psychologist from the United States International University (USIU) said in her research that: “Cognitive, emotional, physic of children and their growth are greatly hindered if they are confined”. This could be one of the people who probably have the details but I can give more with time.

Research has also shown that re-offending unfortunately is very much so in Kenya especially if you have a short sentence. For example, a lady goes to prison because of selling illegal brews. After three months, she is out and she has nothing else to do. So, she will go back to the same trade and get back to prison. So, children of such parents also do the same trade. That is why you will find that it is sort of hereditary, unfortunately, because you grow up in that system. I am sure given a few days; I will be able to give more details on this as I send my presentation to the Commission. Thank you.

**The Presiding Chair** (Commissioner Farah): Thank you very much for your good presentation. That brings us to the end of your presentation. I have no other questions because I know what happens in the prisons. I appreciate.

Leader of Evidence, you may stand down the witness and bring in the next witness.

**The Commission Secretary** (Ms. Nyaundi): Presiding Chair, as the witness leaves, the newspaper article she was referring to appeared in the *Daily Nation* of February 22<sup>nd</sup> 2012. She has furnished the Commission with copies of that newspaper article, and I pray that we admit it as part of the records of the Commission.

**The Presiding Chair** (Commissioner Farah): Admitted as prayed.

*(Ms. Janet Munyoki took the oath)*

*(Mr. Bilasio Wandera took the oath)*

**The Commission Secretary** (Ms. Nyaundi): Thank you and welcome to the Commission. Commissioners, I pray again that since both witnesses come from the same organization, we deal with them at the same time.

**The Presiding Chair** (Commissioner Farah): Proceed, please.

**The Commission Secretary** (Ms. Nyaundi): So, Janet, please, introduce yourself and the work that you do.

**Ms. Janet Munywoki:** Thank you, commissioners, for this opportunity to appear before the Commission to make a presentation.

My name is Janet Munyoki. I am the Programmes Manager at the Legal Resources Foundation. My colleague will introduce himself and then we can proceed.

**Mr. Bilasio Wandera:** My name is Bilasio Wandera. I work for Legal Resources Foundation as a Prison Paralegal in Nairobi Region, based at Nairobi Remand Prison.

**Ms. Jane Munywoki:** Thank you for this opportunity. Legal Resources Foundation is a human rights organization working in Kenya on matters of access to justice for the poor, vulnerable and marginalized. Our work is spread through communities as well as prisons. Our presentation today, therefore, will be around our work in prisons. LRF is in 38 prisons in Kenya where we work with the paralegal officers to help remand prisoners to engage with the justice system. By this, we mean we usually empower them so that they can be able to represent themselves, engage the prisons service to understand prison systems and, therefore, be able to assist in the process of rehabilitation.

Our presentation is based on the statements that we have collected over time from prisoners themselves while engaging in this very important national process. The prisons involved are: Kamiti Maximum, Langata Women, Nairobi Remand, Thika Prison, Nyeri Prison, Isiolo, Nakuru Prison, Machakos, Kakamega, Kisumu and Migori, among others.

Most of the inmates in these facilities are charged with serious offences of robbery, murder, sexual and grievous harm, together with other land related offences. Therefore, my presentation will touch on a few of those offences.

We have established that because our prisons are congested, torture, inhuman and degrading treatment is not anything new. Therefore, this has a direct impact on case management, the length of time it takes for them to be through with the criminal trial process as well as the inordinate congestion in prison. The LRF has presented a research report known as “Who is Responsible for my Pain?” We have presented it today for purposes of reference by the Commission.

We have also established that 72 per cent of cruel and torturous treatment happens at the police stations before prisoners are taken to prison. The evidence in this is that most of them bear traumatising scars. The respective prisoners are able to speak about it.

On the other hand, prison officers have also suffered brutal acts of torture where the inmates have been perpetrators. We can remember this in various prisons like Naivasha and Kamiti and most recently, Nakuru, where prison officers have actually gotten injured. Therefore, we are saying that seeking justice for those prison officers is not easy based on the nature of their work.

My second point is in relation to special interest groups in prison. These include children, persons with disability, prisoners with mental health as well as inter-sex prisoners. The prison structures that we have in Kenya are not conducive enough for special interest groups. In the recent years, we have actually had increasing incidents of inmates who are inter-sex persons. We have established some in Kamiti Maximum Prison, Nyeri Prison and Kitale.

Our position is that these are vulnerable prisoners because of the nature of their biological make up. Most of them stated to us that during searches and in the daily routines of prisons is when they are most vulnerable. They complained of sexual harassment and strip searches for curiosity purposes by both inmates and officers. One of these inmates was able to challenge the conditions that they experienced in prison in Petition No.705 of 2007, which was at the High Court of Kenya. He was actually awarded special damages for inhuman and degrading treatment.

They also experience a lot of problems because prison facilities do not have special programmes that are unique to cater for the special needs of these special interest groups.

My third point is on selective administrative of justice. Our work over 18 years has established that access to justice is possible for the rich. Therefore, the poor continue to be deprived of access to justice. Therefore, access to justice should be looked at overall to protect the interests of these prisoners.

We have relied on various reports to inform our work, one of which is the report of the high level committee of 2008 known as The Madoka Task Force. Most of the recommendations we are making appear in this task force report and other Commissions reports like the Ndung'u Report. Therefore, we will not reinvent the wheel by recommending. Our recommendation is that the reports capture the issues well.

We also have an element of insecurity for prison officers. This has come to light, for example, when conducting prison searches, where you find that they do not have proper tools; therefore, they are exposed to diseases. Similarly, during transit to hospitals and courts, they have been attacked by prisoners. Our work is to work with prisoners, and also to be sensitive to the needs of prison officers, so that our human rights perspective is very objective.

Moving away from prisons to the Judiciary, we are recommending that, particularly when it comes to sentencing of offenders, we need to establish certain guidelines because one of the things that we have realised in our work in prisons is that we have offenders who are charged with same offence but are given different sentences. Therefore, our recommendation is that sentences be meted out to offenders after taking into account circumstances of the cases, looking at the history of the offender and things like that. Today, we have presented a research report that we have conducted in that regard.

Our further recommendations, particularly for female prison officers, is that gender equity be achieved in the appointment because we have realised that where we have

senior female officers, prison reforms are faster. You find that prisons are clean, health issues are considered and generally, prisoners feel that their needs are taken into account.

In relation to police and administrative reforms, in order for us to be able to deal with historical issues, we recommend a review of the different statutes. These include the Prisons Act, the Probation Act and the Police Act. This is because, from our work, we have established that criminal justice agencies cannot work in isolation. In order for access to justice to be seen to be working, they have to work together. They have to cooperate and coordinate. We have also presented a research report that puts emphasis on this aspect.

Our last recommendation is that let those who have caused violations own up and apologise so that justice is seen to be done.

Thank you.

**The Commission Secretary** (Ms. Nyaundi): Thank you very much, Janet. Commissioners, with your permission, there are two reports that Janet has referred to in her presentation. I pray that they be admitted into the record of the Commission. These are: “Who is Responsible for my Pain?” and “Sentencing in Kenya: Practice, Truancy, Possession and Judicial Discretion”.

**The Presiding Chair** (Commission Farah): They are admitted as prayed.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Janet, for the work that the Legal Resource Foundation continues to do. How would you assess the level of engagement you have with Government? In terms of reforms, have they been responsive to some of the recommendations that you have made?

**Ms. Janet Munywoki:** Your question is about the level of engagement. We work very closely with the Government to put emphasis and encourage them to be human rights sensitive in their work with the community. That does not mean that we do not speak in incidents where there are human rights violations. There is an example that I have given of the inter-sex prisoner, where we appeared in the case as an interested party. We were able to establish and provide facts about the conditions of the inmates. Therefore, we have seen tremendous progress, particularly in those cases that we have dealt with.

We have emphasised over time on practice advocacy. What that means is that besides the policy and recommendations that Government institutions can make certain decisions administratively to facilitate their work in enhancing access to justice. One of them is the open-door policy that prisons have, where they have opened their doors to civil society and other groups to come in and help them facilitate prison reforms.

I will give chance to my colleague. He works in Nairobi Remand. He may be having examples.

**Mr. Bilasio Wandera:** Thank you, Janet. The prison authorities are very responsive to the extent that they involve us in various committees like a committee regarding staff housing. Once the structures are complete, they request us to do the inspection before the facilities are officially opened.

On whether the prisons are responsive to the recommendations that we make, they have always involved us in giving feedback on areas they feel they are weak. They have asked for our input on how to improve weak areas. For example, when they were starting the project of using sniffer dogs to get contraband items that get into prison, they solicited for our views and we gave them recommendations on areas where the dogs should be used. We asked them to be using the dogs only in the wards but not on visiting days when relatives come to visit their relatives.

Just to add onto that, it is not all recommendations that they have been able to implement due to various challenges such as funding, technical skills and things like that. Therefore, they also have challenges in handling some of these issues.

Thank you.

**The Commission Secretary** (Ms. Nyaundi): Thank you. The commissioners will now ask you questions.

**The Presiding Chair** (Commissioner Farah): You better write the questions down.

**Commissioner Chawatama:** Thank you very much for your presentation. When I looked at sentencing and your suggestions on sentencing guidelines for judges, I was going to slightly attack you until I read your report. In that report, I saw that for the offence of assault, some offenders are sentenced to a few months, others to a few years and as long as to eight years for the same kind of offence. I am wondering whether or not the Judiciary has had an opportunity to react to your findings, and whether or not your report has had any impact on the sentences that we are seeing now.

**The Presiding Chair** (Commissioner Farah): I have no question for you. I think that is the only question I would have asked.

**Mr. Bilasio Wandera:** As regards the sentencing guidelines, we did this last year and during the research, we visited various court stations and we involved the judges and magistrates in the research. So far, the guidelines are with the Judiciary. We have asked them to take them into account during the reforms that are currently underway in the Judiciary.

The variations in sentencing result from what the law provides. The law gives magistrates and judges discretionary powers to decide. Therefore, when we did the research, we found that there were weaknesses in the particular law. The Judiciary has so far embraced this issue. They have promised us that they are going to react to it in a positive way but how soon is not yet known.

**Commissioner Chawatama:** Maybe, just as a follow up question to that one, even discretion that is not exercised judiciously can be interfered with. Did you appeal to the Judiciary to ask the higher courts to try and intervene on some of these sentences? I also notice that even there was an option for a fine, which by practice is the option that should be exercised before the sentence. In some instances, this was not done. So, did you, as an organisation, try to ask the higher courts to intervene in some of these sentences?

**Ms. Janet Munywoki:** Thank you for that question, Commissioner. Indeed, discretion is left to the magistrate or judge to exercise. Therefore, what we have done consistently is to raise the same issue during courts' committee forums. For example, we have presented statistics based on our work in prison to show that majority of the offenders are actually those with petty offences. In one such report, we have established that most of the offenders would be jailed for between one year and three years, which is what we have defined as petty offences. Therefore, they could be given non- custodial sentences like community service, so that we at least decongest the prisons.

We have existing court committees that we support. Recently, we conducted an evaluation that shows that courts have actually increased giving non-custodial sentences.

Thank you.

**The Presiding Chair** (Commissioner Farah): My only question is about the death penalty. The last person who was executed was one of the 82 coup plotters. Thereafter, the courts have sentenced people to death but they have not been executed; this is another crime – psychological torture. In any given day, a death prisoner does not know when the next day will come. So, did you people campaign for the abolition of the death sentence? Death sentence is one way of one spending their whole life in prison. Or, instead of people staying in prison, which is, again, another offence of torture--- One stays in prison for as long as 10 years before the President reviews the sentences of some condemned prisoners and then the rest continue waiting.

**Mr. Bilasio Wandera:** Thank you, Presiding Chair. On the death penalty, we have engaged the inmates to write memoranda, which were presented to the Task Force on People in Detention. We have also asked them to prepare a memorandum to the Judges and Magistrates Vetting Committee, so that it could be used as part of the material for interviewing the judges and the magistrates for them to explain why they impose death sentence when it is not actually implemented on the ground.

There is also the Commission on Power of Mercy, which our organisation has asked to move with speed and consider the cases of people who are on death row. As my colleague had mentioned, these are some of the legislative and administrative changes that should be undertaken.

**Ms. Janet Munywoki:** Presiding Chair, to emphasise on what my colleague has mentioned, inmates feel that death penalty is actually psychological torture because they

have no idea when they will be executed. They have no idea as to whether they will ever see their loved ones out there. There are even those prisoners who are willing to ask for pardon from those whom they wronged. For us, we support what the new Constitution provides. We really reiterate that our policies need to be reviewed, particularly the Penal Code, because it continues to inform the work of the Judiciary, whereas it contravenes certain provisions of the Constitution, particularly those that touch on the right to life.

**The Presiding Chair** (Commissioner Farah): Thank you very much. That was the last question for you. Thank you for your good presentation. From your good memorandum, we have benefitted a lot.

Leader of Evidence, you can stand them down and bring the next witness.

**The Commission Secretary** (Ms. Nyaundi): Thank you, Presiding Chair. I pray that you admit the presentation dated 29<sup>th</sup> February, 2012 onto the records of the Commission.

**The Presiding Chair** (Commissioner Farah): It is admitted as prayed.

**The Commission Secretary** (Ms. Nyaundi): Commissioners, the next witnesses are both ex-prisoners. I pray that they testify jointly.

**The Presiding Chair** (Commissioner Farah): I accept your prayer. Proceed, please.

We know Prof. Ngotho wa Kariuki. Who is the other person?

**Ms. Patricia Nyaundi**: He is Mr. Owino.

**The Presiding Chair** (Commissioner Farah): Prof. Ngotho wa Kariuki, welcome to the TJRC hearings. We feel honoured that you have come to us today to give evidence.

*(Prof. Ngotho wa Kariuki and Mr. Vitalis Owino Ogutu took the oath)*

**The Commission Secretary** (Ms. Nyaundi): Thank you, gentlemen. We appreciate your presence before the Commission. I ask you, Owino, for the record, that you state your full names, where you stay and your current occupation.

**Mr. Vitalis Owino Ogutu**: I am Vitalis Owino Ogutu. I reside in Bondo District.

**The Commission Secretary** (Ms. Nyaundi): For the record, professor, please, state your full names and where you stay.

**Prof. Ng'otho wa Kariuki**: My names are Prof. Ngotho wa Kariuki. I am currently a member of the Judges and Magistrates Vetting Board, but I am here in my personal capacity as a former prisoner.

**The Commissioner Secretary** (Ms. Nyaundi): Thank you, professor. We will start with you. I will ask that you briefly narrate to the Commission your experiences in the Kenyan prison, with emphasis on recommendations that you will be making for the reform of those institutions.

**Prof. Ng’otho wa Kariuki:** Thank you very much, commissioners, for allowing me this chance to explain my circumstances. I submitted documents to the Truth, Justice and Reconciliation Commission (TJRC) on the Nyayo House Torture Chambers. So, I will not repeat it but instead I will go direct to the circumstances and conditions of the prison when I was there. Between 1986 and 1992, I was in prison twice; first, as a detainee and secondly, as a prisoner charged with sedition. All those were politically-motivated. I also want to state that in March, 1986, I was in Nyayo House in the torture chambers. I am sure that story is known to the Commission. I want to reaffirm that I went through the same process. When my family filed for a *habeas corpus*, I was taken to Shimo la Tewa the same night. The following morning when the case had to appear before court, I was flown back to Kamiti Maximum Prison. When the family went to the court, my detention order was produced. They were told that the matter had been overtaken by events. I became a detainee. In the same evening, I was served with a detention order. Therefore, I was given the prison clothes and my clothes were taken away. One of the points that I would like to bring here is the treatment that I received the first day. The prison warder who I met in Kamiti told me, and I quote:-

“The prison is a graveyard for people who are still living”

He told me to forget all my rights and that I am alive. That will be one of the recommendations that I will make. The prison warders should be trained to treat prisoners in a humane way. Although they are prisoners, they have certain human rights.

The other point that I would like to say is that when you talk about prison, it is important to start from police cells. When I was first arrested, I was taken to Langata Police cells. Then I was taken to Kileleshwa and Kilimani police stations before I was taken to Nyayo House. Those places are congested and there is no hygiene. You are put together with other criminals who go ahead and harass you. I also want to put it on record that I was in Shimo la Tewa, Kamiti, Manyani, Naivasha and Industrial Area. I would like to talk about the conditions in those prisons because from previous discussions, I understand that there has been improvement and reforms. A detainee or prisoner is humiliated and dehumanized.

In Industrial Area, the first thing they do is search or “terror” in prison language. That search is conducted in a way that you are stripped naked; someone searches your backside and anus, which they call the boot in prison. The other thing that one gets is during sleeping time. Someone just sleeps on the floor. In Kamiti, you are given one blanket to use on the floor. Then you are also given two small pots, one for urine and the other one long call. I was put together with prisoners who were mentally sick. They were usually put there temporarily as they await to be taken to Mathari Mental Hospital. They are supposed to either be treated or released under presidential pleasure. They are called



PP. The prison warders have baptized that name to mean “prison property” since they are not taken to the mental hospital. So, when you are put amongst them, it amounts to psychological torture. They spend the night screaming and doing all sorts of things. It was a psychological torture.

Detention was removed but the conditions in prison have not changed. I was there in 1992. When you are kept together with people who are mentally sick or escapees, then you will see all sorts of things. You are not mixed with them but you are kept near a small window where you can see them being punished. One of the biggest problems in prison is that the young prisoners are sodomized publicly. You will see it in the corridors and near your cell. The prison warders watch as it happens. I would recommend that prison warders should be trained to treat prisoners like human beings.

The other point that I would like to speak about is the type of food in prison. The food is very bad. If you read the Prison Act and even the former Detention Act, the issue of food was well defined. Most of the time, good food like meat is supposed to be served three times in a week but in our case, it is usually eaten by warders. Food is used as a way of torturing someone. If you look at the Detention Act, you are entitled to have materials to read although they are supposed to be censored. In order to punish you especially if you are a scholar, they would not give you even a Bible. So, when we talk about reforms, they are supposed to be more holistic because the law was very clear but it was not being followed. When in detention, you are entitled to some hours in the sun but that was used as bait.

The other point that I would like to bring before the Commission is that the prisoners are entitled to a visit by the family. Again, that was used as a stick and carrot. The other point is that there is rampant corruption in prison. Sometimes when the prison warders know your name, they would talk to you and know your contact home, they would extort money from your relatives while cheating that they will give it to you. We only discovered that later on when we came out.

The other humiliating act is that when we were going to the court during the Anyona case in 1990 to 1992, we were supposed to squat on toes and walk in that position. This is a very humiliating thing. The law then and even now is that you are assumed innocent until proved guilty. So people should not be put in remand until they are proved guilty because remand is actually worse than prison. Most people in remand prefer to accept their charges so that they can go to actual prison instead of staying in the remand.

The other issue is that on Sundays, political prisoners were not allowed to attend service. When you are in detention, you live in solitary confinement. In prison, we were allowed once in a while. The chaplain would humiliate people instead of preaching the word of God. He could tell us that we are sinners. There is one famous song that people were always singing; that is, “*nimekosa*”. For example, one preacher came and told us that we were all sinners. He told us that none of us had been removed from church. It might have been true but it was very annoying. We had a confrontation because we felt that that is not the way to preach. So, preaching was also used as a way of humiliation. What one can

recommend is that those chaplains and even the counsellors who come to prison should be trained to know that prisoners will one day come out. Most of people repeat crimes because most of the prisoners are not properly rehabilitated. The prison is actually a place of punishment. That is the other area that we should address in the reform process.

I belong to Prison Fellowship International in Cameroun where we visit prisoners and have an open day with them. We allow them to discuss their problems because they are human beings.

The last point that I would like to make is that the junior warders are more prisoners than the prisoners themselves. They are humiliated, they do not seem to have any rights and their conditions in the houses are very poor. They share one house or even share rooms. They also earn very little and I think their conditions should be improved so that they can feel like Kenyans. That is why most of them rely on food that is supposed to be for prisoners.

Thank you very much. I promise to supply a very comprehensive memorandum. I am very grateful for this occasion.

**Ms. Patricia Nyaundi:** We will now listen to Mr. Owinyo.

**Mr. Vitalis Owinyo Ogutu:** I am happy to be in front of this Commission. I want to give my testimony on how I went to prison. I was employed by Kenya Railways Corporation (KRC) when I was 18 years old. I worked there until I was 38 years when I was arrested. It was on a Tuesday 4<sup>th</sup> December, 1986. I just saw some people who came and told me that they wanted to talk to me. They took me away from where I was working as a painter. We used to paint houses meant for KR workers. I saw a car with four people inside. They were armed with a pistol and they forced me to enter in. They took me to four police stations within Nakuru in one day. They took me to Bondeni Police Station for two hours, they took me to Central Police Station for two hours again, and they also took me to Railways Police Station for another two hours. Lastly, they took me to Bahati Police Station for three hours. Then I was taken back to my house. They searched my house for about three hours but they did not find anything in my house. They told my wife that they had been told to take me away but they did not tell me the reasons.

They then took me to the District Commissioner's (DC) office in Nakuru at around 11.00 p.m. They told me that they will take me to unknown place. They wanted to tell us what I was thinking about. There was nothing in my mind because I was not thinking about anything. They told me to get into the Land Rover while pointing a gun at me. They then blindfolded me. There were other people but they did not want me to see them. They brought me to Nairobi. I did not know that I was coming to Nairobi. The other people were then dragged from the Land Rover and I was the last. They took to me to the Central Police Station. As they were taking me round in different police stations, they told people not to speak to me.

**The Commissioner Secretary** (Ms. Nyaundi): Thank you, Mr. Owinyo, for appearing before the Commission and for the story that you are sharing with us. I trust that you will also give us this in writing. The request that I wanted to make to you, because your invitation was specific, is to tell us about your experience in prison and then give us your recommendations. What you are telling is in your longer statement. If you could just tell us the prisons you went to and what happened there, we will really appreciate.

**Mr. Vitalis Owinyo Ogutu:** Thank you. As I said, I did not jump into prison. When I was taken from Nyayo House to Industrial Area Prison, what I saw there is something that I had never seen all my life. I was stripped naked and they shaved my hair while I was kneeling down. I was told to kneel down on the verandah and they searched my anus to see if I was hiding anything. I slept in Industrial Area Prison for two weeks before I was taken to Kamiti Maximum Prison. When we arrived, I was taken to a small house with two small pots. Those pots were for urinating. From Kamiti, I was taken to Nyeri, King'ong'o Prison. In King'ong'o, I was put into a cell together with the people who were mentally handicapped and there were fleas all over. We stayed there for sometime before being taken to the main jail. That jail that they took me to was a jail in jail. While there, you could not see anybody because you could not be visited. We were beaten and abused. I appealed my case and I was taken to Kamiti Medium Prison. When I went there, I met an athlete called Stephen. He used to abuse me because he used to come from the former President's tribe. They asked me why I did not go to school. They wanted to know why I wanted to overthrow the Government and what would I benefit yet I was not educated.

I do not know what the prison officers have said here but they tell us that things are good right now. I used to eat very bad food which was also in small quantities. I am pleading with this Commission to invite people who are just from prison so that they can get the correct picture of the prisons right now. I have been talking to people who came from prison recently and they say that nothing has changed. They still give out one blanket that the street maker made out of sisal that is spread on the floor. You will feel all the cold that is in prison. We came out of prison with strange ailments that we have not finished treating until today.

There have been very enlightened persons here who spoke very many good things and I do not want to repeat. There is nothing I can add but I want you to know that in prison, there is still intimidation and oppression.

**The Commissioner Secretary** (Ms. Nyaundi): Thank you, Professor and Mr. Owinyo, Commissioners will now ask you questions.

**The Presiding Chair** (Commission Maj-Gen. Farah): I will allow other Commissioner to seek clarifications.

**Commissioner Dinka:** I would like to thank both of you for your testimonies. I wish that you spoke before prison officers spoke. Unfortunately, they have been scheduled for another day. I would have loved to hear what the prison officers and the Permanent

Secretary would say. I think we need to get someone who came out of prison recently to know exactly what is happening and what is taking place. I do not have any question. Your recommendations are very good and what you have told us, although it is a long period of time, it is still very graphic.

I just want to thank you very much. I am glad that you are doing very well physically and the professor is even vetting judges now. So, I wish you luck.

**Commissioner Chawatama:** I agree with the ambassador that we should have listened to them first so that we could put live examples. It could have been nice for them to have witnessed your testimony. All the same, thank you for your recommendations.

Professor, you spoke about how terrible the food was. What about water? Were you able to access clean water? Was there a time when you fell sick? If so, what kind of treatment did you get?

**Commissioner Slye:** Thank you for your testimonies. I just have one question for both you. When you were in detention and prison, you were tortured and physically abused. Why do you think those people were doing those things to you? Why would a human being inflict such horrible pain onto another human being?

**Prof. Ngotho wa Kariuki:** Commissioners, water was readily available. The problem was the process of cleaning your pot. There were no toilets and they would advise you to use your pot. So, hygiene was very poor. I actually got sick and nearly died. I had taken some medicine which I was allergic to. In prison, they always assume that you are pretending so they wait until you collapse. The doctors who used to treat us were selected through connections or loyalty. Sometimes medicine was also used as a torture tool. I remember there is one doctor whom we refused to take his medicine because if he came to see you, he could ask questions like: “Why are you in prison?”

So, that was the situation then. Let me also just answer Professor. For my case, I was involved in a democratic struggle to bring this country back to multipartism. In the last 1970s when I was at the University of Nairobi, that was the bastion of the struggle because our Constitution had been mutilated and we were actually a *de facto* one party state until 1982, when it was made a one party state by law. Some of us said that we would not accept it and the democratic struggle started. Our quarrel with the State was not that we were detained because it was wrong, but it was torture. The detention law actually only removed you from outside. You were supposed to stay with your clothes in prison and every six months, you go to a tribunal, but it did not allow for torture. So, that is exactly the point. Maybe, the question to be asked by this country and the TJRC is why the State constructed Nyayo House torture chambers using public funds to torture Kenyans. That is the gist of the matter. There was a special unit dealing with that. So, even when I heard the prison warders talk, I can answer for them. They did not know that there were some special police specifically for that, so that even if you were kept in Kamiti, they did not have access to that bloc.

The other recommendation, and I do not know whether it has been implemented, is that the visitation to the prisoners and their conjugal rights should be looked into to avoid homosexuality, sodomy and lesbianism in the prisons. This is because the young prisoners are literary auctioned as they come to the prison. They are usually “bought” by the life prisoners.

**Commissioner Slye:** Thank you, Prof. Kariuki, for that. What I was trying to ask was a very difficult question which I wanted you to answer. You are a professor and you have been through this process personally. You have been tortured and so, my assumption is that you might have thought of this a bit. The question is: What do you think allows one human being to inflict such horrible pain on another human being? Do they get pleasure from that or feel an obligation to do that? There are two reasons that I ask that. The first one is that part of our job is to try and understand the perspectives of the people who did really bad things. The second reason, which I think is probably related to why we have been asked to do that, is that if we better understand why people do that, then we can better craft institutions and mechanisms to lessen the possibility that such things will happen again.

**Prof. Ngoto wa Kariuki:** Presiding Chair, I would say that people who commit those crimes, maybe, have an inherent fear in losing power. Therefore, because they believe in power, anybody sort of threatening that power becomes like an animal to them. That is because there was one man called Opiyo who took it personally. To him, as long as you were opposed to the system, the laws did not matter. If you said, ‘take me to court,’ he would say: “We cannot take you to court; we will deal with you here in Nyayo House.” If you have gone through the Dumerag trials of the Second World War, you can see that human beings are capable of all those. This is because we saw engineers designing gas chambers; how to kill as many Jews as possible and reduce the capacity for burying so that you can burn them. That is why I am saying that the same method of constructing the chambers in Nyayo House, I can say that those people themselves were dehumanized. That is because in Nyayo House, they were even afraid to get inside the cells. So, why one person should do that to another – and it has been done in history – I can only say that these are people who are themselves dehumanized. So, they see you not as a human being. Otherwise, there is no explanation why the tortures in Hitler’s Germany, Nyayo House, Mau Mau, and Wagalla Massacre took place. Sometimes you wonder also whether that other person is a human being. Someone puts you naked and tells you to bend and puts a stick in your anus to search you. So, it is a very difficult question.

**Commissioner Chawatama:** Also, in the work that I have done with the police and prison warders, I have found out that when they go for training, they are so badly treated as trainees. So, they are so brutalized when they go for their training. So, when they are released, they also then do their own bullying. I think my question just deserves a “yes” or “no.” During the time that you were in prison, were you visited by any of the adjudicators; either magistrates or justices or as a special detained person that is something that they would have deprived you of?

**Prof. Ngotho wa Kariuki:** In detention, you would appear before a detention tribunal every six months, which was supposed, according to the law, to discuss all your problems. But when you went there, they would only ask you: “Do you have anything to say to the Government?” That was it. During our time in prison, we were not visited even by the counsel or judicial officers. The only person who visited us was a late District Commissioner, but his job was to try and persuade us to apologize and be released.

**Commissioner Chawatama:** I hope that you do not have an opportunity to vet somebody who asked you---

**Prof. Ngotho wa Kariuki:** I have forgiven them.

**Commissioner Chawatama:** That is good. We thank God that you have forgiven them. There is a God in heaven who gives us the grace to forgive.

Thank you.

**The Presiding Chair (Commissioner Farah):** I think from the evidence that you have given us, what is coming into picture is the whole vicious circle from the political side to the torture at the police stations, Judiciary who sentenced others to seven years, to the civil servants, politicians who signed the detention orders to the detention centers or prisons. Before I joined this Commission, I used to think that political detention meant confinement to a nice house somewhere away from the society, but you have comfortable life where you get newspapers, good food and all that. Little did I know that Kamiti itself was a detention centre? What is coming out is, therefore, a whole system. I can understand when you talked about the Second World War and engineers designing those bad things. That was a whole different concept. It was a war. In a war, there are different parameters. Even in Iraq, it was a whole war where some soldiers tortured prisoners because they saw their friends being killed and, therefore, there was the pain of losing a friend. But in this particular scenario, there was no friend that those who tortured you lost and, therefore, there was no pain that they were psychologically undergoing to revenge. Up to now, it baffles me what joy they were getting out of torturing you. I wish the PS and his prison staff were here listening to you and then they would have told us what the situation is now. But as I told the PS, he needs to present a paper to the Government because building a new prison is a different affair. Like the lady there said, the kitchen at Kamiti has not been renovated for 50 years. Recently, in 2010, they gave funds for that kitchen to be renovated. Even the renovation of that kitchen has not improved it at all. Thank you very much. You have really enlightened us and we appreciate.

**Prof. Ngotho wa Kariuki:** Thank you very much. We appreciate too.

**The Commission Secretary (Ms. Nyaundi):** Presiding Chair, with your kind permission, I have noticed a witness who appeared before you yesterday. I just want to acknowledge his presence. He will not be testifying today, but just to appreciate his interest in our work, he is here today. He is hon. Abuya Abuya.

**The Presiding Chair** (Commissioner Farah): Hon. Abuya Abuya, we appreciate your presence. Do you want to say something?

**Hon. Abuya Abuya:** Let me take this opportunity, once again, to thank the Commission for having invited me. Really, it is not very encouraging that I see the Commission having a problem with the former Chairman. I was not ready to come to this Commission if he continued to be in this Commission. I had information when I was in politics – a writer-up – that he is among the few people who sat at Mid-West Hotel, Kericho, deciding the fate of the late Minister, Ouko. I have tried to resist this. That writer-up that I got that enumerate that he was one of those who sat in that meeting and the former Provincial Police Officer---

**Commissioner Chawatama:** Through the Presiding Chair, I think the correct procedure that we would want to follow--- We are going to handle the particular subject that this witness has brought up, whether or not the witness will be able and willing to testify at that time when that issue is before the Commission. Is he able to give a statement to us and then testify?

**The Presiding Chair** (Commissioner Farah): There will be thematic hearings in the future on assassinations. So, when the right time comes, perhaps, hon. Member, you can come back and say what you are saying but this is not the appropriate time. Today, we were dealing with only prisons and detention centers.

Thank you very much.

**The Commission Secretary** (Ms. Nyaundi): Commissioners, I am praying that we adjourn today's proceedings. Those were the last witnesses that we had.

**The Presiding Chair** (Commissioner Farah): Thank you very much, leader of evidence, for having patience. We also thank all the presenters who came and presented to us today.

Thank you very much. Today's proceedings stand adjourned.

*(The Commission adjourned at 3.20 p.m.)*